

CHINA

NEGOTIATIONS FOR RELINQUISHMENT BY THE UNITED STATES
AND OTHER POWERS OF EXTRATERRITORIAL RIGHTS IN CHINA^{1/}

Memorandum by the Chief of the Division of Far Eastern Affairs
(Hornbeck)

[Washington,] February 7, 1931.

Referring to the statement to the Chinese Minister, on extraterritoriality, which was read and of which a copy was handed to the Minister today,^{30/} Mr. Hornbeck made orally an additional statement, as follows:

"The Minister will notice that the Department has expressed a hope that the Chinese Government will give earnest and serious consideration to this project, in order that the actual drafting of a treaty may be begun as soon as possible. The Department is serious in the view which has been expressed that the conditions existing in China today make it necessary to provide for a transitional arrangement preparing the way for the complete abolition of extraterritoriality at a later date.

"In the written statement which is being handed to you, the Department has refrained from quoting statements of high Chinese officials and other leaders of Chinese thought but as an indication of what the Department has in mind in this regard, reference is made to the following remarks which were reported, according to a Chinese source, to have been made by President Chiang Kai-shek in October, 1930:

"One of the most serious criticisms which foreigners have directed at us is that, while we have issued a number of manifestos and formulated countless schemes and programs, few of them have been translated into realities. When we dispassionately scrutinize our past work, we can not but admit the justice of such charges. For the deplorable state of affairs prevailing in the country we should blame, not the aggression of foreign imperialists, but rather ourselves."

There has also been omitted reference to the desperate conditions which prevail in several parts of China as a result, principally, of the recent civil war and political contests; to the prevalence of banditry and "communism" in almost every part of China; to the kidnapping of a large number of foreigners and the murder of some, and to losses which have been suffered generally by all foreign interests and by millions of Chinese. We are all familiar with these facts; there is no need to make of them an exhibit, least of all to make an account of them a matter of present record. Nevertheless, account must be taken of them and foreign governments, in dealing with the important question of the position of their nationals in China, cannot be blind to them.

"The Department has noticed in press reports emanating from China, particularly those of a semi-official agency, that certain members of the National Government at Nanking are urging that the Chinese Government take drastic action if the American Government and other governments concerned do not agree in the immediate future to the complete abolition of extraterritoriality. It is hoped that these utterances are not to be regarded as representing

^{1/} For previous correspondence, see Foreign Relations, 1930, vol. II, pp. 353 ff.

^{30/} Supra.

The Chinese Legation to the Department of State^{35/}

STATEMENT

The Chinese Minister has not failed to give his earnest and serious consideration to the observations contained in the Statement of the State Department handed him on February 7, 1931.

He has noted the renewed expression of the sympathy of the American Government with the desire of the Chinese people to bring to an end the extra-territorial system in China and of its wish to make every effort within its power in this regard. He has also observed that the latest proposals of the State Department, as compared with previous ones, represent some advance in the direction of the desires of the Chinese Government.

Nevertheless there is still a considerable gap between the Department's project and the desires of the Chinese Government. The Chinese Government sees no reason for withholding the transfer of criminal jurisdiction over American nationals in China when civil jurisdiction and police jurisdiction are transferred. The appointment of legal counselors, first suggested by the Chinese Government, must necessarily be made by that Government without restriction of choice as they are its officials; furthermore since they are legal advisers or counselors, it would be detrimental to the independence and dignity of the judiciary if they were to be given, as proposed by the Department, any of the powers and functions of judges. With regard to the proposal that reservation be made of areas where Chinese administrative jurisdiction does not at present apply and of a certain area around Shanghai, the Chinese Minister notes that the Department proposed redrafting of the original article; however, inasmuch as the great majority of American nationals reside in these areas, so that such a reservation would render any transfer of jurisdiction unimportant if not illusory, the Chinese Government desires the suppression of this proposed provision.

These are the main points on which the two Governments at present differ after discussions conducted by the Minister with officials of the State Department for more than two years. At this stage of the discussions, it seems desirable to request a definite statement of the Department's views on them before proceeding to negotiate on other points.

The Chinese Minister notes the Department's solicitude for the safeguarding of American interests that "have been built up in China during the past 87 years" and, with that object, for the making of some "transitional arrangement" "to bring about by an evolutionary process the change from the existing system of extraterritorial jurisdiction to the new system under which these interests will be completely subject to the jurisdiction of the Chinese Government." He permits himself the following remarks.

The abolition of the extraterritorial system, even if brought about immediately, cannot be a sudden surprise to those American interests in view of the well known efforts of the Chinese Government in recent years to that end and the, in any case, approaching extinction of the system by efflux of time. The psychology of American nationals in China,--and the matter seems to be largely if not entirely a psychological one,--would appear to have had time during the recent years by an evolutionary process to undergo a change and be ready to accept the transfer of jurisdiction. Nevertheless the Chinese Government has been prepared to erect in the judicial system of the country certain institutions, such as special chambers for the trial of cases involving American nationals and legal counselors, which are eminently for the purpose of meeting the solicitude of the American Government for a transitional arrangement and the psychology of American interests.

the views of the Chinese Government, for the reason that drastic action if undertaken, would produce a very serious situation which might compel the American Government and/or other governments to take special steps for the safeguarding of the rights and interests of their nationals.

"I am sure that you yourself realize the difficulty and seriousness of the problem and that you will not fail to impress upon your Government that, while the American Government is prepared to go a long way toward meeting the legitimate wishes of the Chinese people in regard to the question of extraterritoriality, it cannot be stampeded into assenting to any arrangement which fails to safeguard the interests of the nationals of the United States of America in China which have been built up lawfully during the past eighty-seven years on the basis of mutual and reciprocal assurance and accommodation provided by the treaties."

(Pages 730 and 731)

Memorandum by the Assistant Secretary of State (Castle)

[Washington,] February 20, 1931.

The Chinese Minister came to see me this morning to leave with me the attached memorandum on extraterritoriality.^{22/} He said that it was his own idea, but as it follows most accurately the statement by the Kuo Wen News Agency which we got by cable this morning^{23/} as to what China intended to do, I suppose it is the result of instructions from his Government. The Minister asked me whether I had any comments to make and I said I had not. I reminded him that the conversations at present were informal conversations between him and Dr. Hornbeck. I read the memorandum, however, and let him see that I was disappointed in its tenor. I told him that Dr. Hornbeck would soon be back and that I had no doubt we could shortly inform him as to our reaction to his statement. He pointed out that the situation in so far as China was concerned was, in his opinion, very similar to the Turkish situation when there was an attempt to negotiate the Lausanne Treaty. He said that at the first conference Lord Curzon said it was impossible to give up any privileges and left, that three months later he came back and granted everything Turkey had asked for. The Minister said he thought the whole question was largely psychological and added that the nations which had already given up extraterritoriality had had no trouble in China. I said this was quite contrary to my understanding, that I understood they had had rather serious trouble. His only answer to that was that he thought foreigners had trouble in any country. I said that, although foreigners might get themselves into trouble in any country, I thought they had a right to justice. He said that the Strawn Commission had made various suggestions^{24/} which China had not accepted. I said to that that the Strawn Commission was giving certain friendly advice to China and that, if China had followed out the recommendations, I thought the situation would be very different today.

W. R. C[astle,] Jr.

(Pages 733 and 734)

^{32/} Infra.

^{33/} Telegram not printed.

^{34/} For summary, see telegram No. 412, September 17, 1926, from the Charge in China, Foreign Relations, 1926, vol. I, p. 979; also see Department of State, Report of the Commission on Extraterritoriality in China, Peking, September 16, 1926 (Washington, Government Printing Office, 1926).

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The same reluctance on the part of foreigners living under extraterritorial regime to emerge from it has been observed in the case of other countries; nevertheless the change has been made, sometimes gradually, sometimes abruptly.

It may be said without fear of contradiction that the present state of Chinese laws and judicial system compares favorably with that of many other countries including some where consular jurisdiction does not and has never existed. Nor do the interests in China of those countries which have given up extraterritorial rights compare unfavorably, as regards protection afforded and their condition of growth, with those of the extraterritorial powers.

The Minister, therefore, trusts that the Department will give a sympathetic and favorable reply to the points raised in this Statement so that the discussions so long conducted between the Department and himself may be brought to a speedy and successful termination.

[Washington,] February 20, 1931.

(Pages 734, 735 and 736)

Memorandum by the Assistant Secretary of State (Castle) of a
Conversation With the Norwegian Minister (Bachke)

[Washington,] February 27, 1931.

The Minister came in to read me a telegram which his Government had sent to the Norwegian Minister in Shanghai. The telegram referred to the fact that Norway had officially informed the Chinese that when the Great Powers gave up extraterritorial rights, Norway would follow suit, but that in the meantime it would retain the rights held by the Great Powers. The telegram further instructed the Minister to have an exchange of notes with the Chinese Government confirming this understanding. He then asked me what we were doing and I told him in strict confidence that Doctor Wu had recently intimated to us that China would insist on what amounts to a general abolition of extraterritorial rights, that, therefore, we were simply holding tight for the moment and were waiting to see what the result would be of Miles Lampson's and M. Wilden's^{38/} forthcoming conversation in Nanking.

W. R. C[astle,] Jr.

(Page 737)

^{38/} Henri A. Wilden, French Minister in China.

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, March 3, 1931--6 p. m.

5. For Minister Johnson: Your March 2, noon.^{29/}

(1) The Department notes the delay in action by the British Minister, whose Government, which is waiting for approval by the Dominions, has not yet sent its final instructions.

(2) The Department notes the recognition by the British of the possibility that they may find it necessary as a final measure to concede to China jurisdiction in all its ports except Shanghai. Last week the Department was informed of a London rumor to the effect that it is the British Government's intention to concede everything save jurisdiction at Shanghai.

(3) Regarding your comment on the Department's indication to the Chinese of its readiness to drop evocation, the Department feels obliged to point out that in the last 3 months it has been negotiating, while the British have stood still respecting negotiations; hence, this offer of a concession by the Department is on a par with any similar step, if and when the British Minister takes it when he negotiates. The Department, moreover, consulted the British Foreign Office regarding this proposed action, the Foreign Office suggesting that the Department commence with this concession, just as Sir Miles Lampson apparently intends to start with it. It should be kept in mind that there have been and are both American-Chinese and British-Chinese negotiations on this subject. It should be recalled, for instance, that the British chose to act last September at a moment when the Department was in no position to do so and was advocating delay in favor of simultaneous and coincidental action.

(4) The Department feels that, following the disclosure last December of the Chinese project, the British apparent inability to act with promptitude has jeopardized and may jeopardize further the chance of obtaining an approximately satisfactory treaty. The Department is, therefore, not yet prepared to make common cause with the British to the extent that the negotiations here be transferred to you, thus linking their negotiations definitely with ours. While awaiting developments, the Department prefers to proceed in accordance with its 67, February 26, 1 p. m. After being informed of definite instructions sent Lampson or of any changed attitude on the part of the Chinese, the Department will promptly consider whether the seat of our negotiations might possibly be transferred.

(5) Meanwhile you are instructed to reiterate to the British Minister that this Government is taking no new step for the moment. Lampson should have your full moral support. In conversing with the Chinese Minister for Foreign Affairs, you should make it clear that the American and British Governments hold a common view that they cannot give their assent to a nongradual, complete sweeping away of extraterritorial rights and that neither Government intends to outbid the other in the making of concessions. In regard to relinquishing extraterritorial rights, the problem is to substitute for the present system an arrangement regulating better than at present the contacts between foreigners in China and the Chinese people.

^{29/}
Not printed.

(6) The Department agrees with you that Hy Han-min's^{40/} elimination probably will encourage the Chinese Government to be more realistic and conciliatory in its attitude, and the Department wishes you to impress upon Dr. C. T. Wang the desirability of modifying the nonconciliatory attitude which recently has apparently been his. You may in your discretion tentatively and casually inquire of him, in this connection, what his attitude would be if this Government were to propose transferring the negotiations to Nanking for the sake of expediting and simplifying the whole question of negotiations.

STIMSON

(Pages 738 and 739)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, March 3, 1931--3 p. m.
[Received March 4--6:03 a. m.]

The Japanese Charge, Shigemitsu, has just told me that on February 28 Ambassador Debuchi^{41/} was informed by Assistant Secretary Castle of the Department's decision to drop negotiations on extraterritoriality with Dr. C. C. Wu at Washington, owing to dissatisfaction with the Chinese Minister's attitude, wherefore negotiations had been transferred to China.

JOHNSON

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The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, March 4, 1931--3 p. m.

6. For Minister Johnson: Your March 3, 3 p. m.

In answer to Debuchi's question concerning the extraterritorial negotiations, Assistant Secretary Castle told him in strict confidence that matters did not appear to be getting anywhere with the Chinese Minister and that the Department would have to consider the transfer of negotiations to China unless progress was made here. You should warn Shigemitsu that a suggestion of this possibility should go to no one. In telegram 5, March 3, 6 p. m., to Nanking, the Department already has suggested that you may deem it advisable to

^{40/} President of the Legislative Yuan.

^{41/} Katsuji Debuchi, Japanese Ambassador in the United States.

inquire tentatively of Dr. C. T. Wang as to his attitude on the transfer of the negotiations to Nanking. Your comments will be awaited before further action is taken.

STIMSON

(Page 740)

The British Embassy to the Department of State^{44/}

Washington, March 7, 1931.

No. 65

His Majesty's Ambassador has the honour to communicate to the Secretary of State the attached document giving the substance of the instructions issued to Sir Miles Lampson in regard to Extraterritoriality in China. His Majesty's Government trust that the policy laid down in these instructions will meet with the agreement of the United States Government.

Should that be the case, His Majesty's Government would hope that the United States Minister to China might receive instructions in the same sense. His Majesty's Government would then propose that the United States Minister and His Majesty's Minister should be authorized, at their discretion, to decide when the right moment has arrived to offer the surrender of criminal jurisdiction, and to act accordingly.

[Enclosure]

(Page 741)

Memorandum by the Minister in China (Johnson)^{45/}

Nanking, March 7, 1931.

I called upon Dr. C. T. Wang, Minister for Foreign Affairs, today and in the course of conversation I referred to the question of extraterritoriality which has been the subject for discussion in Washington between the Secretary of State and the Chinese Minister for some time. I said that I had not discussed

^{44/} Handed to the Assistant Secretary of State by the British Ambassador on March 7, 1931.

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^{45/} Copy transmitted to the Department by the Minister in his despatch of March 10, from Nanking; received April 7. The substance of the memorandum was reported to the Department in the Minister's telegram of March 7, 1931, noon, from Nanking; received March 7, 10:35 a. m. The final sentence stated that the Minister did not feel the moment propitious to mention a transfer of negotiations from Washington to Nanking. (793.003/549)

this question with him before as I had not wished to complicate in any way the even tenor of discussions in Washington by any discussions of mine here.

Dr. Wang stated that he also had refrained from mentioning the matter to me for the same reason. He said that the Chinese Minister at Washington had been instructed to make a statement to the Department of State in regard to the three principles upon which agreement was still to be found, namely, the questions of co-judges, reservation of criminal jurisdiction and reserved areas. He said that the Department of State had made an evasive answer to the Chinese Minister who had been instructed to press the matter and that they were still awaiting a reply.

I said that I had been informed of this statement by the Department of State and that I had been instructed to say to him in all earnestness that the American and British Governments held in common the view that assent could not be given to a complete and non-gradual sweeping away of extraterritorial rights such as the Chinese Minister in Washington was apparently insisting upon, that there was no intimation on the part of either the American or the British Government to outbid one another in the making of concessions. I said that the problem which faced us in the relinquishment of these rights was that of substituting for the present system an arrangement which would regulate better than the present one the contacts between the people of China and foreigners in China. I expressed the hope that the Minister for Foreign Affairs would see this question as we saw it and that some way might be found whereby we could reach an understanding. I stated that my Government felt that these principles were necessary to the successful evolutionary processes whereby extraterritorial rights would be relinquished.

Dr. Wang stated that the Chinese Government could not under any circumstances make any concessions in regard to these points, that until they were given up he felt that there must result a deadlock. He said that if the American Government felt as I had indicated, he must conclude that a deadlock had resulted.

I expressed myself as being very sorry to hear this as I felt there was no need for a deadlock. He stated that he could see no other end to the discussion and that if a deadlock did result, the matter of course must be brought before the People's Conference in May with results which he could not foresee. I inferred from his statement that he anticipated that there would be a heated discussion of the matter in the People's Conference.

I asked him whether I should tell my Government what he had said to me about a deadlock and he said he hoped I would make it very clear that there must be a deadlock unless the American Government would concede these points.

NELSON TRUSLER JOHNSON

(Pages 743 and 744)

Memorandum by the Minister in China (Johnson)^{46/}

Nanking, March 8, 1931.

I called on the British Minister this evening and he informed me that he had had his first formal conversation with Dr. C. T. Wang on the subject of the extraterritorial negotiations this morning. He had told Dr. Wang of his instructions and stated that he was ready to discuss the four fundamental principles of evocation, reservation of criminal jurisdiction, co-judges and exclusive areas, upon which no agreement had as yet been reached. He told Dr. Wang that these four principles were of great importance and that the British Government considered them necessary to the success of the gradual and evolutionary process by which the ultimate abolition of extraterritorial rights was to be accomplished.

Dr. Wang told Sir Miles that the Chinese Government could not make concessions regarding these four principles and expressed the fear that a deadlock would result were the British Government to insist upon them. Sir Miles said he did not wish to discuss deadlocks at this stage of the negotiations. He said he desired to take up seriously the question of co-judges and expressed the belief that they could find some mutually satisfactory formula since this was a principle calculated to strengthen the Chinese judicial machinery. Further discussions are to be resumed from this point. It was arranged that Dr. Hsu Mo^{47/} and Mr. Teichman^{48/} were to discuss details regarding guarantees in connection with protection of property rights, taxation, police offenses, bail and imprisonment.

The British Minister and I both agreed that further negotiations would be very difficult if the Minister for Foreign Affairs maintains his present attitude as he appears to be unwilling or unable to offer concessions.

Sir Miles expects to remain in Nanking for the next few days in order to be available for further discussions, but he expects to go to Shanghai on Saturday next for a stay of three or four days.

NELSON TRUSLER JOHNSON

(Pages 744 and 745)

^{46/} Copy transmitted to the Department by the Minister without covering despatch received April 28. Memorandum reported by the Minister in telegram of March 9, 1931, 3 p. m., from Nanking; received March 9, 9:50 a. m. (793.003/551).

^{47/} Director of European-American Division of the Chinese Foreign Office.

^{48/} Eric Teichman, Chinese Secretary of the British Legation in China.

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^{48/} Eric Teichman, Chinese Secretary of the British Legation in China.

Memorandum by the Assistant Secretary of State (Castle) of
a Conversation With the Japanese Ambassador (Debuchi)

[Washington,] March 9, 1931.

The Ambassador began his conversation by apologizing for having unintentionally misquoted me in a telegram to Baron Shidehara.^{49/} He said that, in telegraphing, he explained that we were merely considering the transfer of negotiations to China and that he also told Baron Shidehara to keep the communication entirely secret. He said he was sorry that Baron Shidehara had evidently notified Shigemitsu, but that, of course, it would go no further.

The Ambassador then told me that the Japanese were themselves now planning to inaugurate negotiations with the Chinese on the subject of extraterritoriality. He said that their whole thesis was to press for the gradual abolition as the Chinese were able to meet modern conditions of justice. He said that his Government was determined that there should be no sweeping abolition of consular rights and of extraterritorial questions in general and that it hoped to be able to work closely with us and with the British. He said that he thought full instructions had not yet gone to Shigemitsu, but that he had still undeciphered a telegram covering the ground to some extent, which Kato^{50/} was going to bring to the Far Eastern Division. He said that Shigemitsu had instructions to furnish Johnson with a full copy of his orders.

W[illiam] R. C[astle], Jr.

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Memorandum by the Chief of the Division of Far Eastern Affairs
(Hornbeck) of a Conversation With the Counselor of the Japanese
Embassy (Kato)

[Washington,] March 9, 1931.

Mr. Kato called and said he was instructed to bring to the Department a memorandum, that this memorandum dealt with extraterritoriality; that it contained in a somewhat tentative form a statement which the Japanese Government intended its Charge in China should give to the Chinese Foreign Office; that it contained a proposal, but in very general terms.^{51/} Mr. Kato then handed Mr. Hornbeck a three-page memorandum hereto attached.

^{49/} Japanese Minister for Foreign Affairs.

^{50/} Counselor of the Japanese Embassy.

^{51/} Infra.

Upon perusal, this memorandum is found to be extremely vague. It implies a willingness on the part of the Japanese Government "to cooperate to a rational adjustment compatible with the essential interests of the Japanese and with the actual conditions prevailing in China." It proposes gradual relinquishment "according to a progressive scheme framed with reference to subject matter, geographical area or other considerations." It implies that Japan is willing to give up civil jurisdiction, except in special areas and is willing to discuss, in relation to conditions existing in China, relinquishment at some future time of criminal jurisdiction. The one thing with regard to which it approaches precision is in the proposal that "concurrently with the relinquishment of extraterritoriality and civil matters, Japanese subjects shall be permitted to reside and carry on trades in all parts of the country . . ." It also calls for most-favored nation treatment.

Mr. Kato asked what Mr. Hornbeck thought of this "proposal." Mr. Hornbeck replied that it seemed very similar to what the Japanese had proposed at a much earlier date. Mr. Kato said that it was substantially the same except that it now brought in Japanese willingness to discuss relinquishment of criminal jurisdiction. Mr. Hornbeck asked what it was that moved the Japanese Government to prepare this proposal at this time: Had they received any new communication from the Chinese? Mr. Kato replied that they had not, that there had been Japanese-Chinese discussions in February a year ago and the matter had since stood substantially open, but that the Japanese Government understood that the British and the American Governments were now moving in the matter and the Japanese Government felt that it should move.

Mr. Hornbeck inquired whether Mr. Kato envisaged what might be the Chinese reply to this proposal. Mr. Kato said that he did not, and he inquired what Mr. Hornbeck thought might be the reply. Mr. Hornbeck said that he would not be surprised if the Chinese replied that they had heard the substance of these proposals before. He said that the Chinese were for the moment at least taking the position that they must insist on complete relinquishment of extraterritorial rights and could make no concessions.

Mr. Kato said that the Japanese Government had heard that the British were preparing to "relinquish everything." Mr. Hornbeck asked if he might inquire where the Japanese Government had heard that. Mr. Kato said he did not know. Mr. Hornbeck said that we had been told, through diplomatic channels not our own, that there was such a rumor, and that it would be interesting to know whether the source or channel was the same in both cases. Mr. Kato repeated that he did not know whence the Japanese Government had gotten news of this rumor.

Mr. Hornbeck said that we had informed the Chinese of points which we were willing to discuss; that the Chinese had asked us to agree to certain principles which, if agreed to, would leave little if anything concerning which to negotiate; that we had not replied; and that for the moment at least we were taking no new steps; we were engaged in "watchful waiting"; and that if and when we took a new step of any consequence, we would, if possible, inform the Embassy.

(Note: For comment, see separate page.^{52/})

S[tanley] K. H[ornbeck]

(Pages 746 and 747)

^{52/}
Not printed.

The Japanese Embassy to the Department of State^{53/}

The Japanese Government, constant in their sympathy with the aspiration of China for the removal of existing limitation upon her powers of jurisdiction, are ready to cooperate to a rational adjustment compatible with the essential interests of Japan and with the actual conditions prevailing in China. They now desire to propose the following terms as the bases on which extraterritoriality in China is to be abolished.

2. The Extraterritorial privileges now enjoyed by Japan in China shall be relinquished according to a progressive scheme framed with reference to subject-matter, geographical area or other considerations. In the event of such a progressive scheme being adopted, China shall, pari passu with the extent of the progressive relinquishment, take such judicial and administrative measures as will afford sufficient safeguards for the security of the lives and property of Japanese subjects. It is understood that the relinquishment of Extraterritoriality being closely correlated with the opening of the interior, Japanese subjects shall be permitted to enjoy, in the interior of China, rights of residence and trade and the exercise of their private rights concurrently with the progressive relinquishment of extraterritorial privileges.

3. For example,

(A) Upon the lapse of a stated period of time after the promulgation and putting into force by China of codes of laws of primary importance, conformable with the modern concepts of jurisprudence, Japanese subjects shall, in the territory of China, with the exception of certain limited areas of special nature, be amenable to Chinese laws and jurisdiction in civil matters. In view of the consequences of still greater importance involved in the relinquishment of extraterritoriality in criminal matters, the time and extent of such relinquishment shall be determined in full consideration of the judicial and other conditions obtaining in China and especially in the administrative aspects of extraterritoriality.

(B) In regard to the laws and regulations applicable to civil or criminal matters, the organization of the judiciary, judicial procedure, etc., China shall take due and efficient measures to safeguard the security of the lives and property of Japanese subjects.

(C) It is understood that, concurrently with the relinquishment of extraterritoriality in civil matters, Japanese subjects shall be permitted to reside and carry on trades in all parts of the country, and it is further understood that Japanese subjects shall on condition of reciprocity be permitted to acquire and enjoy private rights including private rights in immovable property in those regions in which extraterritoriality in both civil and criminal matters shall have been relinquished.

4. With respect to extraterritoriality and all matters related thereto, Japanese subjects shall in no case be subject to any treatment less favorable than that accorded to the subjects or citizens of any other foreign country.

(Pages 747 and 748)

^{53/}

Handed to the Chief of the Division of Far Eastern Affairs by the Counselor of the Japanese Embassy on March 9, 1931.

The Acting Secretary of State to the Minister in China (Johnson)

Washington, March 9, 1931--7 p. m.

92. Legation's 52, February 6 ^{54/}3, 6 p. m., and 101, March 4, 5 p. m.

1. Department has not received Yunnanfu's despatch No. 14, December 30, 1930, to the Legation.^{25/} Please forward copy and in your discretion telegraph summary of item on page 3, as Department does not understand why the Consul at Yunnanfu has entered into a discussion with the Chinese authorities of Yunnan in regard to extraterritorial rights when no specific case appears to have arisen which would necessitate such a discussion.

2. If no specific case requiring such discussion had arisen, the Department desires that you issue a circular instruction cautioning all American consular officers in China not to enter into discussions with the Chinese authorities in regard to extraterritorial rights unless specific cases arise which necessitate such action. In this event, consular officers should continue to be guided by the Department's telegrams to the Legation, No. 49, February 8, 1 p. m., 1930,^{26/} and No. 92, March 12, noon, 1930.^{27/}

Carr

(Pages 748 and 749)

Memorandum by Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs

Washington, 7 March 11, 1931.

Mr. C. C. Wu, the Chinese Minister, called on the afternoon of March 11, 1931, and inquired whether the Department was prepared to reply to the statement which he handed to Mr. Castle on February 20, 1931.^{28/}

Mr. Hornbeck replied that points raised in the Minister's statement created a situation which was a radical departure from the basis on which the negotiations had been proceeding. He pointed out that the negotiations had been commenced and carried on on the understanding that a gradual process of relinquishment of extraterritorial rights was to be evolved which would be satisfactory to both Governments, and that, if the Department acceded to the views of the Chinese Government in regard to the three points raised in the Minister's statement, this would amount to assent to complete and immediate abolition of extraterritorial rights.

^{54/} Not printed.

^{55/} Not printed; see telegram No. 131, March 14, 11 a. m., from the Minister in China, p. 754.

^{56/} Summarized in Green Haywood Hackworth, Digest of International Law, vol. II, pp. 503-504.

^{57/} Foreign Relations, 1930, vol. II, p. 517.

^{58/} Ante, p. 734.

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Mr. Wu replied that, while this might appear to be the case, it could be argued that the system which the Chinese Government proposed to establish as outlined in its counter-proposals of December 7, 1930, was a plan for the gradual abolition of extraterritorial rights, since this plan provided special sections in the Chinese Courts for the trial of Americans, which was an arrangement that did not exist in the judicial systems of any of the countries where extraterritoriality had never existed.

There followed a discussion of what might be regarded as constituting a plan for "gradual" abolition. Mr. Hornbeck pointed out the difference between proposals drafted with detail such as the Department has prepared--which give a complete picture and which may be subjected to revision and amendment in course of discussion--and proposals such as the Chinese have submitted which provide, when analyzed, merely for abolition of extraterritoriality.

Mr. Wu said he hoped we would give an answer on the points raised in his statement of February 20. Mr. Hornbeck then asked whether there was expected an answer of "yes" or "no" in reply to the three points raised in the statement or if the answer might be made in such a way as to expect a discussion of the points involved. Mr. Wu replied that he felt that the answer should be "yes" or "no", remarking that his Government at Nanking had made a decision in regard to the maximum which it would concede, which made it impossible for him to propose less. Mr. Hornbeck then stated that this confirmed what had been reported to the Department from other sources, and that, in such circumstances, the only reply which the Department felt it could make was that contained in a prepared statement which he would have to give Dr. Wu.^{59/}

After reading the statement, Dr. Wu, with some evidence of embarrassment, stated that there appeared to be nothing more he could do and that he hoped Minister Johnson and Minister Wang would be able to accomplish more than we had been able to accomplish here. Mr. Hornbeck said that it was our feeling that the Minister had struggled conscientiously with this problem, as had we, but that it seemed that the Minister's instructions were so restrictive as to leave no room for profitable discussion here--for the moment at least--and that we hoped the obstacles could be cleared away by Mr. Wang and Mr. Johnson.

Mr. Wu, on leaving, remarked that probably we would soon or later have the whole matter thrown back upon us (i. e. himself and the Department) here.

(Pages 749 and 750)

^{59/} Infra. Statement quoted to the Minister in China in telegram No. 10, March 11, 1931, 6 p. m., which concluded as follows: "Take no action until receipt of your instructions which will follow." (793.003/551)

The Department of State to the Chinese Legation^{60/}

Extraterritoriality

Statement to the Chinese Minister

The Department refers to the Statement handed by the Chinese Minister to Mr. Castle, Assistant Secretary of State, on February 20, 1931, in which the Minister states inter alia that, before proceeding to negotiate on other points, it seems desirable to have a definite statement of the Department's views on certain points:

The surrender of criminal jurisdiction over American nationals in China in addition to the surrender of civil and police jurisdiction.

The appointment of legal counselors (who shall function without any rights as co-judges), by the Chinese Government without restriction of choice.

The elimination of any reserved areas from the proposed scheme for the relinquishment of extraterritorial rights.

It appears from the statement under reference that the Chinese Government now seeks to place these negotiations on a radically different basis from that upon which they have been proceeding during the past two years. Under these circumstances, in order to save time and to facilitate the efforts of both Governments to bring these negotiations to a successful conclusion, the Department believes that it is desirable at this stage that the American Minister to China discuss with the Minister for Foreign Affairs the issues thus presented, it being the Department's understanding that the Minister for Foreign Affairs is discussing such matters with representatives in China of other extraterritorial powers. The Department is, therefore, instructing the American Minister to China to confer with the Minister for Foreign Affairs, and hopes that, in consequence of such conference, there may be reached an understanding which will contribute toward an early and successful conclusion of a satisfactory agreement.

[Washington,] March 11, 1931.

(Page 751)

Memorandum by the Minister in China (Johnson)^{61/}

Nanking, March 12, 1931.

In the course of conversation today I asked Dr. C. T. Wang, the Minister for Foreign Affairs, whether he thought it would benefit or facilitate negotiations between the United States and China if negotiations were transferred to China.

^{60/}

Handed to the Chinese Minister by the Chief of the Division of Far Eastern Affairs on March 11, 1931.

^{61/}

Copy transmitted to the Department by the Minister without covering despatch; received April 28.

Dr. Wang stated that unless the United States was prepared to concede the three points upon which the two countries now held radically differing opinions, he could not see any value in the transferring of negotiations. He said that he would be very glad at all times to discuss questions relating to negotiations with me if such discussions would assist in making clear to the Department of State the attitude of the Chinese Government, but that as far as facilitating the reaching of an agreement was concerned, he did not see how a mere transfer of the negotiations to Nanking at this time would help.

He said he thought we were not so far apart on the subject of co-judges, although China could not accept legal advisors who were authorized to function as judges, nor could she consent to the appointment of such legal advisors from a panel drawn up by The Hague. He said they were quite prepared to appoint legal advisors with the qualifications specified for judges of the permanent court and this phraseology they had used in their draft. He said he thought we had asked for special chambers in too many places, but on the other hand, China was prepared to have them at more places than she had originally indicated. He thought there was reason for having such courts at Foochow and at Tsingtao.

In regard to jurisdiction, the United States was contending that civil jurisdiction be given up first and then criminal jurisdiction but we set no time for the giving up of criminal jurisdiction. We merely left it indefinite. China, on the other hand, felt that both civil and criminal jurisdiction must go at once and together.

In regard to reserved areas, China was even more determined not to consent to what we asked. We asked that Shanghai, Hankow, Tientsin, Canton, Harbin and Mukden be reserved as areas within which Chinese jurisdiction should not enter. This amounted to giving China the shadow and reserving the substance. In the interior of China the only Americans who lived there were doctors, missionaries and a few others who were law abiding people. They never had any troubles of a civil or criminal nature but in the ports, and particularly in Shanghai, Tientsin, Hankow, one found large communities of business people where there was constant litigation at law, where criminal laws were constantly being invoked and these areas we were reserving entirely. He said that such a withdrawal of extraterritorial privileges amounted in fact to a joke and China did not particularly enjoy such a joke.

I stated that I had no desire to hamper in any way the work of my friend, Dr. Wu, that it had merely occurred to me that the transfer of negotiations at this point might in some way facilitate matters and I wished to ask the question. I had no idea that my Government was contemplating action of this kind.

NELSON TRUSLER JOHNSON

(Pages 751-753)

Memorandum by the Assistant Secretary of State (Castle)

[Washington,] March 13, 1931.

The British Ambassador called to tell me of Sir Miles Lampson's first conference with Mr. C. T. Wang on the subject of extrajurisdictionality.

Lampson began by asking whether it would be well to discuss the big questions or to take up matters of detail. Mr. Wang said he would rather discuss the big questions.

Lampson then took up the question of evocation, which he said was of great importance. Mr. Wang refused absolutely to consider it and, without completely giving up the point, Lampson passed on to the question of co-judges. This also was refused by Mr. Wang, but led to a discussion of legal advisers. Mr. Wang said that the Chinese Government would refuse absolutely to be bound by any panel which might be suggested by the Hague Court or by anybody else, but that it probably would be willing to make some kind of satisfactory declaration concerning the rights of legal advisers. There was no agreement reached and no possibility of agreement on either the subject of criminal jurisdiction or that of reserved areas. In the discussion of reserved areas, C. T. Wang said that, to agree, would be "to keep the shell and give the oyster." During the discussion Lampson held strongly to the point that the British, being already in possession "besti possidentes" were in a very strong position to negotiate and this Wang conceded to be the truth. Lampson also, in his talk, said that it was not the desire of the British, in any suggestions they might make, to derogate from the authority of the Chinese courts, but rather to help build up a judicial system which would be free and above suspicion. When it came to the matter of discussing details, it was agreed that this should be taken up between Teichman and H'su. The Ambassador said that Johnson had already informed Lampson that he could count on his moral support.

I asked the Ambassador whether, in using the phrase in his memorandum "international settlement" he had really meant to refer only to that part of Shanghai known technically as the "international settlement." I told him exactly as I did before that we, in discussing Shanghai, always envisaged it as a port and not as an international settlement and that I did not believe that the American Government any more than his Government want to throw France and Japan, for example, into the discard. He said that if his Government meant only the "international settlement" it was a thought reaching forward into the almost invisible future, that certainly it could be held only as a final resort to save something out of the wreck, that it is certainly not a question which could arise for a very long time. I told him that unfortunately a rumor had somehow got around that the British had this idea in the back of their heads. He said this was extraordinarily unfortunate and that somebody in London must have been talking loosely.

W[illiam] R. C[astle] Jr.

(Pages 753 and 754)

The Minister in China (Johnson) to the Secretary of State

Peiping, March 14, 1931--11 a. m.

Received 11:50 a. m.

131. Department's 92, March 9, 7 p. m.

1. Copies of Yunnanfu's despatch No. 14, December 30, 1930, transmitted in the pouch leaving today.^{62/} Page 3 of despatch stated that chief judge and the procurator of the Yunnan High Court frankly admitted they were under instructions from the Ministry of Justice, Nanking, to give no further judicial recognition to the extraterritorial provisions of the Sino-American treaties; that they have been ordered to deal with all mixed cases strictly in accordance with new laws and procedure of the National Government and that Chinese law gives court authority to try Americans on criminal charges. Stevens^{63/} reported he was engaged in compiling report on present conditions and working of judicial machinery of Yunnan Province and that he would submit report^{64/} as soon as possible after visiting local courts and prisons and interviewing members of the Chinese legal profession.

2. It appears that Stevens in efforts to obtain information requested by Department in second paragraph of its instruction No. 264, September 26, 1930, to the Legation,^{64/} informally discussed matter with Yunnan judicial authorities. It is believed that his informal inquiries may lead to interesting disclosures as to exact nature of instructions which have emanated from Nanking in reference to control to be exercised by Chinese courts throughout China over foreigners having extraterritorial rights.

3. Legation is preparing Consular circular in accordance with paragraph 2 of Department's telegram under acknowledgment.

For the Minister:
PERKINS

(Pages 754 and 755)

^{62/} Received April 7; not printed.

^{63/} Harry E. Stevens, Consul at Yunnanfu.

^{64/} Not printed.

The Secretary of State to the Consul General at Nanking (Peck)[Paraphrase]

Washington, March 14, 1931--4 p. m.

12. For Minister Johnson: Department's 10, March 11, 6 p. m.^{65/}

(1) On March 7 the British Ambassador handed the Department a third-person note together with a memorandum which contained the "substance of instructions" sent to the British Minister in China.

The British Government in the note expresses its "trust that the policy laid down in these instructions will meet with the agreement of the United States Government" and its hope that you will be instructed in the same sense by this Government. It is indicated by the memorandum's contents that the British Government is ready ultimately to concede practically everything save jurisdiction in the Shanghai International Settlement, on condition that the Chinese give their assent to certain legal safeguards.

(2) It is assumed by the Department that Lampson either will have shown you a text of his instructions or will have acquainted you with their tenor. For this reason the Department is not quoting the text or summarizing the contents of the memorandum in this telegram.

(3) The British memorandum is being carefully studied by the Department. While the Department is not in entire accord with the principles therein laid down or the procedure therein outlined, it would be willing to give up both evocation and co-judges and to yield the rights, first, of civil and, second, of criminal jurisdiction, on the condition that the Chinese are ready at the same time to agree (a) to satisfactory formulas providing specified legal safeguards as to functions and powers of legal advisers, taxation, rights in immovable property, and criminal procedure as to arrest, imprisonment, bail, and trial, and (b) to exemption of certain areas at the China treaty ports of Shanghai, Tientsin, Canton, and Hankow (Shanghai being regarded as the most important). It is the view of the Department that any definite commitments in principle on our part to specified concessions would be highly dangerous and should be avoided unless the Chinese on their part reciprocally and simultaneously make definite commitments to specified arrangements. For example, take the history of the resolution which was adopted at the Peking Tariff Conference on November 19, 1926 [1925].^{67/} Accordingly, it is felt by the Department that discussion of any concessions which the Chinese propose be made by this Government beyond those proposed in the hitherto prepared American drafts, should be conducted on a "no commitment" and conditional basis and that, whenever there is mention of American concession or concessions, it should be indicated that these may be made only in return for Chinese concessions regarding provisions for which this Government is asking.

^{65/}

Not printed; it quoted statement handed to Chinese Minister on March 11, p. 751, and concluded as follows: "Take no action until receipt of your instructions which will follow." (793.003/551)

^{67/}

For text of resolution, see telegram of November 19, 1925, from the American delegation at Peking, Foreign Relations, 1925, vol. I, p. 881.

In the light of your recent telegrams and of other information from China and of recent conversations with the Chinese Minister here, the Department now doubts that either C. T. Wang or C. C. Wu has discretion relating to the points of co-judges, criminal jurisdiction, and reserved areas, and the Department inclines to the belief that arriving at a noncommitment accord with C. T. Wang would be the procedure most likely to dissolve what amounts to a deadlock. Such accord would comprehend the maximum concessions which we would be prepared to make, along with the concessions acceptable from the Chinese in return, and this accord could be submitted to the ultimate Chinese authorities for the purpose of effecting a reconsideration of the restrictions which (apparently) govern the Ministry for Foreign Affairs.

The Department is not persuaded that the necessity to surrender everything except jurisdiction at Shanghai should be considered at this time as a probable eventuality and believes that, while thinking about what may be the maximum American concessions, there should be kept in mind provisions of such phraseology and scope as are calculated to safeguard general foreign interests, thereby enlisting the support and approval of other powers, particularly of France and Japan. Thus, thought should be given, for instance, to the whole port of Shanghai, taking up the problem of "greater Shanghai" instead of merely the International Settlement.

(4) It is noted by the Department that in the memorandum of the British Government the latter attaches the greatest importance to a variety of specified points. While concurring, the Department notes no inclusion among these points of legal guarantees respecting rights acquired in immovable property, and these should also be made the subject of legal safeguards.

(5) Considering the above and likewise the restrictions apparently placed upon C. C. Wu here by the Chinese Government with reference to what the Minister may discuss, you will be guided by the following course of action which the Department has decided upon:

In reply to Wu's statement of February 20, the Department on March 11 communicated to him a statement the text of which was telegraphed you in Department's 10, March 11, 6 p. m. From the above you will note that the Department expects you to begin discussions with C. T. Wang in a further effort to bring about a modification of the position taken by him and his Government as to co-judges, criminal jurisdiction, and excluded areas.

(6) A careful study of the Department's instruction No. 374, January 19, ^{68/} will be of assistance to you. The Department has, after further study and in deference to the British Foreign Office views, revised the draft therein as follows: (a) Article 2 of the January 19 draft has been deleted, and article 2 of the October 28 proposals has been restored; (b) article 6 of the January 19 draft has been deleted and article 6 of the October 28 proposals restored; (c) the text of article 9 has been altered to read: ^{69/} "The surrender, as provided in this treaty, of the jurisdiction of the courts of the United States of America in China shall not apply within a radius of 10 miles from the present Custom Houses in the treaty ports of Shanghai, Tientsin, Hankow and Canton."; (d) a text for article 13 has been drafted to read: ^{69/} "Whenever and

^{68/} Not printed.

^{69/} Quotation not paraphrased.

wherever the United States of America shall have completely surrendered extra-territorial jurisdiction over its nationals in China, the nationals of the United States of America shall then, if they do not already possess such rights under existing treaties, be entitled to reside, travel, trade and own property.

You may find this draft, thus amended, helpful, though it need not be used as a proposal.

Should the principle of legal advisers acting as co-judges be given up, the text of article 2 in the January 19 draft should be found helpful. As to article 6 relating to personal status matters, if the new Chinese Civil Code regarding such matters can be shown to be substantially similar to those found in western European national civil codes, and if the Chinese Government would undertake in personal status cases involving Americans to have these provisions always applied, the Department would be willing to concede complete jurisdiction in these matters to the Chinese courts. The Department would also expect, in such an event, however, that the Chinese Government would grant to the American consular officers the same rights regarding the administration of estates as are accorded usually in most countries to consular officers.

(7) The decision whether you are to proceed alone or simultaneously or jointly with Sir Miles Lampson is left to your discretion. You will confer and cooperate with him on the basis of association, not of alliance. In your discretion you may take with reference to proposed concessions such initial and intermediary positions as you may find advisable, but you will stop short of any surrender respecting legal safeguards as above outlined or the principle of excluded areas.

(8) At least five advantages are believed to be offered by this course of action: First, this course avoids the hazard inherent in an attempt by us to effect a definite transfer of negotiations during which we might be informed by the Chinese of the deadlock of our negotiations; second, this course enables you, without full powers being issued, to enter into Nanking discussions quasi negotiation; third, this course enables you to collaborate closely with Lampson, who seems at this stage to be confronted with the same problem facing us, namely, to persuade the Chinese to relax with reference to their extreme demands; fourth, this course enables this Government to continue to act in cooperation with, though independently of, the British; and, fifth, this course leaves this Government, in case the Nanking efforts fail, in a position still to resume the negotiations in Washington.

(9) You should discuss with Lampson this plan of action in as much detail as you may choose and should give C. T. Wang a copy of the statement handed on March 11 to C. C. Wu here, thereupon proceeding as outlined above.

The Department should be kept fully informed.

STIMSON

(Pages 755-758)

The Chinese Legation to the Department of State

MEMORANDUM TO THE DEPARTMENT OF STATE

The Ministry of Foreign Affairs has given careful consideration to the suggestion of the State Department that the American Minister to China should discuss with the Minister for Foreign Affairs certain issues referred to in the Department's Statement handed to the Chinese Minister on March 11, 1931.

The Ministry regrets that it is unable to enter into discussion of the three vital points which were raised in the Chinese Minister's statement to the Department of February 20, 1931, and on which the Ministry hopes the American Government will unreservedly meet its wishes. The transfer of the negotiations at this juncture from Washington to Nanking would not, in the opinion of the Ministry, serve any useful purpose. If and when the points above mentioned have been satisfactorily settled, while there will be no objection to the transfer to Nanking of the discussion of other matters in connection with the subject of extraterritoriality, the Chinese Government nevertheless desires to see the negotiations which have been held so long in Washington to be continued and brought to an early and successful conclusion there.

[Washington,] March 14, 1931.

(Pages 758 and 759)

The Secretary of State to the Ambassador in Great Britain (Dawes)

Washington, March 16, 1931--6 p. m.

71. Your No. 69, March 6, 5 p. m. ^{71/}

1. British Ambassador handed Department on March 7 a third person note covering a memorandum containing "substance of instructions sent to Sir Miles Lampson."

In the Note, the British Government expresses "trust that the policy laid down in these instructions will meet with the agreement of the United States Government" and expresses hope that this Government will instruct the American Minister in the same sense. The contents of the memorandum indicate that the British Government is prepared to concede ultimately practically everything except the surrender of jurisdiction in the International Settlement at Shanghai, provided Chinese assent to certain legal safeguards.

2. Department, although not in complete accord with the plan outlined in this communication, is gratified to observe that the concessions which the Foreign Office is prepared to make coincide with those which the Department has envisaged as possibly or even probably necessary.

The Foreign Office authorizes Sir M. Lampson to give up evocation as the first step. The Department regards this as advisable.

^{71/}
Not printed.

The Foreign Office believes that, in order to bring negotiations to a successful conclusion, the right of criminal jurisdiction will have to be abandoned. The Department concurs. However, the Department doubts whether assent in principle to relinquishment of criminal jurisdiction will, when given, contribute materially to the possibility of gaining assent of the Chinese to the principle of co-judges. The order in which possible abandonment may be made may be discussed between Lampson and Johnson.

The Foreign Office regards agreement upon certain legal safeguards as vital. The Department concurs, but notes that among the safeguards specified there are not included legal guarantees in regard to the rights acquired in immovable property, which rights the Department believes should also be made the subject of legal safeguards.

The Foreign Office believes that, as to safeguards, detail is of essential importance; that no agreement will be possible unless arrangements are made which will meet the requirements of British public opinion; and that if such requirements are met it will be possible to proceed liberally. The Department's views, *mutatis mutandis*, are similar.

The Foreign Office expresses, with reasons, the view that it may be advisable ultimately to give up the idea of co-judges. The Department concurs, but, as stated above, suggests that Johnson and Lampson confer as to order of possible abandonment.

The Foreign Office expresses the view that the exclusion of Shanghai is the most important interest at stake "even if the area excluded is limited to the International Settlement only". The Department concurs, but, with regard to Shanghai, feels that, it is desirable to think constantly of "Greater Shanghai" and, for the present at least, of the additional treaty ports of Canton, Hankow and Tientsin. Department feels that, on this point as on others in giving thought to what may be our maximum concessions, we should on each point have in mind possible provisions of such scope and phraseology as will be calculated to safeguard foreign interests in general and thus be likely to enlist the approval and support of the other most interested powers.

3. In the light of recent conversations with Wu and of other information, Department now doubts whether the Chinese Foreign Office has discretion in relation to the points of co-judges, criminal jurisdiction and reserved area. Department regards as highly dangerous, and to be avoided for the present, assent, even in principle, to concession on these points except as simultaneous the Chinese may be found prepared to agree to (1) satisfactory formulas for specified legal safeguards and (2) exemption of certain areas at certain treaty ports, Shanghai of course being the most important. Department is inclined to believe that the procedure most likely to dissolve what approximates a deadlock would be to sketch tentative agreements comprehending concessions which might be made on the one hand in return for concessions which, if offered on the other, would be accepted, which sketches Wang could submit to the ultimate Chinese authorities with a view to effecting reconsideration of the restrictions under which Chinese Foreign Office apparently is working.

4. On March 11, in reply to the Chinese Minister's statement of February 20, the Department handed to the Chinese Minister here a statement, the concluding sentences of which read as follows: "It appears from the statement under reference that the Chinese Government now seeks to place these negotiations on a radically different basis from that upon which they have been proceeding during the past two years. Under these circumstances, in order to save time and to facilitate the efforts of both Governments to bring these negotiations to a successful conclusion, the Department believes that it is desirable at this stage that the American Minister to China discuss with the Minister for Foreign

Affairs the issues thus presented, it being the Department's understanding that the Minister for Foreign Affairs is discussing such matters with representatives in China of other extraterritorial powers. The Department is, therefore, instructing the American Minister to China to confer with the Minister for Foreign Affairs, and hopes that, in consequence of such conference, there may be reached an understanding which will contribute toward an early and successful conclusion of a satisfactory agreement."

The Department has instructed the American Minister along the lines of the above. The Department's action does not constitute a definite transfer of the seat of our negotiations, but conversations here remain suspended pending, at least, indications of progress at Nanking. The American Minister is to act in close cooperation with but independently of the British negotiators. If further steps are taken here, notice will be given.

5. Please inform the British Foreign Office of the above.

STIMSON

(Pages 759-762)

✓ ✓
Memorandum by the Minister in China (Johnson) of a Conversation With
the Chinese Minister for Foreign Affairs (C. T. Wang) ^{74/}

Nanking, March 19, 1931.

I handed to Dr. C. T. Wang today a memorandum giving the text of a statement handed to Dr. C. C. Wu, the Chinese Minister at Washington, on March 11th, stating that the Government of the United States felt that at this juncture negotiations in regard to extraterritoriality might be facilitated if the American Minister to China were authorized to discuss with the Chinese Minister for Foreign Affairs outstanding issues in connection with the principles involved.

Dr. Wang stated that Dr. Wu had been instructed to inform the Department that the Chinese Government regretted that the Government of the United States was unable to accede to the desires of the Government of China in regard to the three principles of co-judges, criminal jurisdiction and reserved areas, and that the mere transfer of negotiations to Nanking at this stage would have no effect upon the firm position of the Chinese Government in this matter. Dr. Wu had also been instructed to say that it was hoped that Dr. Wu would be able to sign a treaty should one result from the discussions now going on.

I said that there was no thought on the part of the Department to deprive Dr. Wu of this honor, but I felt that the Department had all along been under the impression that the Chinese Government was willing to negotiate on the

74/

Copy transmitted to the Department by the Minister in China without covering despatch; received May 12. Substance reported by the Minister in his telegram of March 19, 1931, 7 p. m., from Nanking; received March 19, 4:12 p. m. (793.003/563)

basis laid down in the exchange of notes of 1929 when the United States Government had indicated its readiness to negotiate on a basis of gradual relinquishment of extraterritorial privileges.^{75/}

Dr. Wang said that the Chinese Government had never accepted gradual relinquishment as a basis for negotiation, either as to type of case or as to geographic areas.

I said that to the best of my knowledge Dr. Wu had never informed us of this attitude and by his silence and his willingness to negotiate The Department had assumed that this basis was acceptable to the Chinese Government. On this Dr. Wang made no reply but said he was ready to discuss the nature of the various legal guarantees such as duties of counselors, number and location of special chambers, et cetera, but there was no ground for discussion of the main principles involved. The Chinese Government was firmly determined to stand for the immediate relinquishment of civil as well as criminal jurisdiction and the abolishment of reserved areas. All that remained was for the United States Government to indicate its position regarding those principles. I told him that I would inform my Government.

NELSON TRUSLER JOHNSON

(Pages 770 and 771)

The Acting Secretary of State to the Consul General at Nanking
(Peck)

[Paraphrase]^{79/}

Washington, March 21, 1931--3 p. m.

15. For Minister Johnson: Your March 17, noon, from Nanking.

(1) You may use at your discretion the following comments by the Department on the tentative texts which you quoted in your telegram.

(2) Legal counsellors. The Department believes that, in addition to the provision for legal counsellors being deputed by the Ministry of Justice to serve during hearings of cases, it is desirable to have a provision for these counsellors to be deputed by the said Ministry "either on its own initiative or upon request of the parties to such actions."

^{75/} See telegram No. 254, August 1, 1929, 11 a. m., to the Minister in China, Foreign Relations, 1929, vol. II, p. 596.

^{79/} Quotations not paraphrased.

As to the provision which empowers the Ministry of Justice to take action such as may be required as a result of recommendations made by the legal counsellors, phraseology somewhat as follows is suggested by the Department: "until these observations have been considered by the Ministry of Justice, which the Chinese Government undertakes shall be empowered to take such action as the case may require."

Regarding the Chinese Government's desire for a Chinese legal counsellor as a liaison officer between the Chinese judiciary and the foreign counsellors, the Department does not perceive any objection to the appointment of such a counsellor for that purpose on condition his function is understood to be primarily one of liaison.

For the moment the Department offers no other comment on the text as quoted in your telegram of the provisions regarding legal counsellors. It must be remembered, however, that no understanding has been reached yet with the Chinese as to the three major issues, that is, co-judges, criminal jurisdiction, and excluded areas. As reported, the text contemplates apparently the giving up of the principle of co-judges although no agreement has been obtained from the Chinese to exclude certain areas. Therefore, the Department believes it to be highly desirable for all the provisions regarding legal counsellors to be kept upon a strictly "noncommitment" basis for the purpose of avoiding the danger mentioned in paragraph (3) of the Department's 12, March 14, 4 p. m., to Nanking.

(3) Lawyers and interpreters. It is agreed by the Department that there should be a provision entitling Americans to employ any foreign attorney, irrespective of nationality, whom the Chinese Government has recognized for practice before the Chinese courts.

(4) Special Chambers. For the convenience of the large number of foreigners, including Americans, who reside in Peiping, the Department would like to see this city added to the list of places where Special Chambers are to be established.

The Department would not object to this article being placed in an annex to the treaty rather than in the treaty itself.

(5) Taxation. The Department perceives no objection to having the provisions of the October 28 proposals, sections (e) and (f) of article 3 placed in either the preamble or an annex, or an exchange of notes, or the treaty article enumerating the rights of Americans in parts of China where there is a complete surrender of extraterritorial rights. In case of continued objection in this connection by the Chinese, because of such a provision being derogatory to the dignity of their courts, the wording might be altered to require "the Government of China" instead of "the Chinese courts" rendering protection and security to American persons and property in China, this being the customary treaty form of this provision.

(6) Arbitration. The Department concurs in the view that the ambiguous phrase "in accordance with Chinese law" should be clarified. It is believed also that the principle of rejecting awards because they are contrary to the general principles of law may be interpreted so broadly as to defeat the purpose of having this clause included in the treaty. The Department suggests as a possible solution to these two questions that the phrase "in accordance with Chinese law" be deleted and that the last part of this article be worded as follows: "unless the award is contrary to public order or good morals or is based on grounds which are contrary to specific provisions of Chinese law".

(7) Rights in immovable property and expropriation. As to the expropriation of property, it is the feeling of the Department that agreement is imperative upon some formula providing for compensation, no matter whether Chinese law so provides or not in the case of Chinese citizens. The Department believes that, in view of the complex conditions in China, the plea of "grave emergencies" will occur with irritating frequency if there is no provision for payment of compensation. By reference to the Extraterritoriality Commission's 1926 report, paragraph 106, it will be seen that in 1915 China had a law which provided for compensation, even if this law was not being enforced. The Commission, moreover, recommended, *inter alia*, that China promulgate a land expropriation law. After a hasty study of United States treaty relations, the Department believes American citizens to be entitled everywhere to compensation upon the expropriation of their property by foreign governments, whether resulting from laws in force in foreign countries with which the United States has treaties or resulting from specific treaty provision. As to the latter, since 1920 the United States has negotiated with Germany, Estonia, Hungary, Honduras, Latvia, and El Salvador treaties containing the following provision: "their property shall not be taken without due process of law and without payment of just compensation." The provisions of article 14 of the United States Constitution assure Chinese in the United States that they cannot be deprived of property without due process of law, and this includes compensation.

The Department believes, regarding the provision which invalidates rights in immovable property on "legal grounds as a result of a decision rendered by a modern Chinese court", that it would be desirable if possible to add a provision in the following sense: "in reaching their decisions these courts shall take into consideration the treaty provisions and laws, customs and practices in various parts of China which existed at the time when the property rights were acquired".

(8) Immunities of premises, etc. Regarding the form of warrants for arrest or search, for Federal practice in the United States, see "the code of laws of the United States of America in force December 6, 1926" (a copy of which is known to be at the Shanghai Consulate General and another is believed to be at Nanking), paragraph 602, page 507, and paragraph 616, page 508.

(9) Treatment of companies. Although there prevails in the United States among the States thereof the general rule that by "the law of comity among nations, a corporation created by one sovereign is permitted to make contracts in another and to sue and be sued in its courts", alien corporations must comply with both Federal and state laws, the latter varying in a number of respects, before these corporations have the right to carry on business with the same rights and privileges as domestic corporations. No objection is seen by the Department to the text of this article as telegraphed, except that as a result of the phrase "subject to reciprocity of treatment for Chinese companies", some restrictions respecting matters in which the United States may be unable, under existing or future laws, to extend reciprocal treatment, may be imposed upon American companies which do business in China. See Moore's Digest, volume 4, page 19.

(10) Pending cases. A provision is noted in the second sentence of the telegraphed text that pending cases "shall continue until judgment is pronounced", while there is a provision in the third sentence that such cases "shall be finally disposed of and wound up within a period of 6 months". It would seem that these two provisions may be subjected to conflicting interpretations, and the Department feels there should be a deletion of the provision in the third sentence requiring that all pending cases be wound up within a specified time. Unnecessary hardships might be imposed upon litigants by a time limit to wind up pending cases, especially by a short period of 6 months. Should the Chinese Government entertain a fear lest the docket be "padded", it might be given an assurance on this point through agreement for the submission of a list of pending cases at the time jurisdiction is transferred.

(11) Nondiscriminatory treatment. For the purpose of the Sino-American negotiations, it is, in the Department's opinion, practically imperative to avoid using in this article the phrase "subject to reciprocity of treatment for China" because it will be impossible, on account of some American state laws, to extend reciprocal treatment regarding rights in immovable property and perhaps regarding other matters, one such having been mentioned above in connection with the rights and privileges of alien juridical persons. Although the British cannot well be asked to eliminate this phrase, if the British Government is in fact prepared to extend reciprocity of treatment in all the matters the proposed treaty covers, the adoption in the Sino-British text of this phrase will make our negotiations more difficult. The phraseology appearing in the American draft of January 19 is preferred by the Department. Should the Chinese insist upon reciprocity of treatment, this point probably will require some very delicate discussion pending agreement upon a satisfactory formula.

Carr

(Pages 772-775)

The Acting Secretary of State to the Consul General at Nanking
(Peck)

[Paraphrase]^{80/}

Washington, March 24, 1931--3 p. m.

16. For Minister Johnson:

(1) The British Foreign Office has informed the Department, through the British Embassy here and the American Embassy in London, of the progress of the British negotiations. Among other things, they say: "The first concession which Lampson made was in fact not evocation but co-judges. He had contemplated giving up co-judges last, but seems to have been influenced by the wording of the latest American draft (i.e., the draft of January 19)." Furthermore: "Lampson expects that the negotiations will shortly reach a stage when, all other points having been disposed of, he will be in a position to offer to surrender criminal jurisdiction in return for the exclusion of certain areas." Likewise: "The position reached in our negotiations appears to render unnecessary the adoption of the procedure proposed by the State Department for dissolving a possible deadlock."

The Department feels that the Foreign Office is optimistic.

^{80/}

Quotations not paraphrased.

(2) On March 23 the Chinese Minister called at the Department and asked for a reply to his March 14 memorandum. (This memorandum was telegraphed you in the Department's 14, March 16, 5 p. m.) Dr. Wu was referred to the March 11 statement by the Department to him and was informed that the Department sees no process by which the three points which the Chinese statement of February 20 raised can be discussed without antecedent and simultaneous discussion of other points; that the Department has felt and still feels it to be desirable, in view of the limitations apparently placed by the Chinese Government upon the Minister's authority to discuss these points, for the subject to be discussed at Nanking by you with the Chinese Minister for Foreign Affairs; and that the Department perceives no reason for Dr. C. T. Wang's not carrying on the discussion with you concurrently with those discussions Wang has with the representatives of other powers.

The Chinese Minister stated that Dr. Wang had laid before the British Minister the same three vital points which had been presented to the Department and that, when Sir Miles Lampson said he was unable to concede these points, an arrangement had been made to begin discussion with Hsu Mo of other points, without committing the Foreign Minister. Wu said Wang could not make any concession as to the vital points.

The Minister was informed that, since the Chinese Foreign Office was discussing other points, the Department's opinion was confirmed that to proceed as suggested by us at Nanking was more practicable for the present than to indulge here in further discussion until such time as the revision of the Minister's instructions would make possible such negotiation in Washington as is apparently proceeding in Nanking. Wu was told the desire of the Department is to reach an agreement which is mutually satisfactory, and the Department has no preference regarding the place to conclude the negotiations and to sign the treaty. He was told also that the Department's view is that matters would be expedited by Dr. Wang's discussing with you just the kind of points he is discussing with the British Minister.

Wu said he would "think the matter over."

Then he inquired whether we would be ready to concede the three vital points in the event a satisfactory agreement on safeguards had been reached. The reply was that this Government would be glad to have any balanced project discussed, but the three vital points could be discussed only concurrently with or following discussion of the other points.

(3) We have the impression that the effort of the Chinese is in the direction of evoking a disclosure of the concessions which the Department may be prepared to make, with no commitment on the part of the Chinese to anything other than what they proposed last December. You will perceive the Department desires (a) to avoid being committed in any one-sided fashion, (b) to give the Chinese no occasion or opportunity to declare the negotiations deadlocked, and (c) to inject no factor which might involve the British negotiations in difficulty.

(4) In the light of the foregoing, you should confer with the Foreign Minister and continue your cooperation with the British Minister.

Carr

(Pages 775-777)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, March 27, 1931--11 a. m.

[Received 11:25 a. m.]

Department's 16, March 24, 3 p. m., to Nanking.

(1) The British Minister returned on March 23 to Nanking and on March 25 resumed negotiations with Dr. C. T. Wang concerning guarantees. At that time Lampson presented redrafts of certain articles previously discussed and also a redraft of the first part of article 1 on the transfer of jurisdiction. Lampson proposed also that by an unpublished, informal exchange of notes regarding the registration of lawyers the possession of diplomas from Chinese law schools or the qualifying through Chinese legal examinations should not be required of British lawyers. On March 26 Taichman conferred further with Hsu Mo as to all of the legal guarantees. Copies of the various discussed articles have been promised me as soon as they have been confirmed. I understand that, among the accomplished things, there has been dropped as of doubtful value the final sentence of the draft on "rights in immovable property and expropriation", namely, "the use of the property of British subjects shall not be denied to them even temporarily". As it stood, this clause seemed to legalize a system of seizing foreign property temporarily with or without compensation.

(2) It seems to me that the best thing I can do for the moment is to refrain from taking any initiative in these matters here so long as the British are apparently making progress. To the British Minister I have given the Department's suggestions and redrafts so that he may make use of them as occasion offers. He is keeping me informed as to developments. I am thus left free to take up matters anew if necessary and to avoid at the same time any complication for the negotiations going on now.

(3) Lampson wishes to find out how much of the legal guarantees can be disposed of before he proceeds to discuss the major and vital questions, criminal jurisdiction and reserved areas. The Minister has indicated to C. T. Wang that the attitude of the British Government on the major issues will be influenced by the Chinese position as to guarantees. Lampson has now been given complete discretion regarding criminal jurisdiction and is prepared, I understand, to throw it into the balance upon reaching satisfactory understandings regarding legal guarantees and in exchange for the reserved areas. Tomorrow I expect again to see Lampson and will then report further texts to the Department.

Johnson

(Pages 777 and 778)

The Minister in China (Johnson) to the Secretary of State

Nanking, March 28, 1931--10 a. m.
[Received March 29--3:42 a. m.]^{81/}

Referring to my telegram of March 27, 11 a. m., paragraph No. (3).

1. Following are additional texts tentatively agreed upon by the British Minister and Minister for Foreign Affairs at latest conversation. Comment in confidential code is submitted in later telegram.^{82/}

2. Transfer of jurisdiction. ^{11/} (1) Except (in criminal cases, other than minor offenses indicated below, and) as otherwise provided by the present treaty, British subjects in China shall as from its coming into force be subject to the jurisdiction of the modern Chinese courts of justice (Fa Yuan) and to the duly promulgated laws, ordinances and regulations in China.

(2) As regards rights of appeal and in all other matters of procedure the modern Chinese codes of law and procedure shall be applicable to British subjects. In all legal proceedings British subjects shall enjoy treatment not less favorable than that accorded to Chinese citizens.

(3) Except as provided in paragraph (4) of this article, British subjects shall not be subject to jurisdiction of the police courts nor shall they be subject to jurisdiction of any other tribunals than the modern Chinese courts of justice.

(4) British subjects shall be subject to the jurisdiction of the modern police courts in case of offenses under the police offenses code or under municipal regulations, but in each of such cases the penalty imposed by the court shall not exceed a fine of \$15, or, in the event of such fine not being paid, detention at the rate of 1 day's detention for each dollar of the fine imposed up to a maximum of 15 days."

3. Declaration. "With reference to the treaty concluded between us today, I have the honor to declare on behalf of my Government that the Chinese courts will ensure to the persons and property of British subjects due protection in accordance with international law and the general practice of nations.

4. Lawyers and interpretation /Interpreters?/. Additional paragraph: "In all judicial proceedings in which British subjects are summoned to appear, whether as parties to the case or witnesses, and in all court processes directly concerning British subjects, their names will, in order to avoid mistakes and misunderstandings, be added in English to the Chinese text of the summons, order or other court process."

5. "Lawyers' diplomas interpretation. Agreed minute of interview between the Minister for Foreign Affairs and His Britannic Majesty's Minister: Sir Miles Lampson, referring to the matter of the registration of British lawyers, inquired whether he was correct in understanding that it was not the intention of the Chinese Government to require that duly qualified British lawyers appearing on behalf of British parties in the Chinese courts should have a knowledge of a Chinese language or possess diplomas of Chinese law schools. Doctor Wang replied that the above understanding was correct."

^{81/}
Telegram in five sections.

^{82/}
Infra.

6. Legal counselors. Additional matters. "There shall also be included amongst these legal counselors one legal counselor of Chinese nationality to be similarly selected and appointed from among Chinese legal experts possessing the same training, qualifications and experience.

"In all cases in which British subjects are involved as defendants a foreign legal counselor shall be present at the hearings of the cases in both the high and district courts and judgments shall be reserved until he has made within 3 days after the conclusion of the trial such observations as he may desire to the judges in chambers, and, in the event of the judges failing to give them due consideration, the execution of the judgment will be suspended until the observations of the legal counselor have been considered by the Ministry of Justice, which will take such action as it deems appropriate in the interest of justice.

The Chinese court of justice referred to in article 1 shall not begin to exercise jurisdiction over British subjects until the Special Chambers referred to in article 2 have been organized and until the legal counselors above mentioned have been appointed and installed in office as provided in this article."

7. "Declaration attached to the article concerning legal counselors. Minister of Foreign Affairs to His Britannic Majesty's Minister: With reference to the treaty concluded between us today, I have the honor to declare on behalf of my Government that the legal counsel referred to in article (blank) of the above-mentioned treaty will be engaged and employed by the Chinese Government under contracts specifying in detail the duration and the terms of their service, including in the case of each foreign legal counselor total emoluments of not less than £3,000 (sterling) additional compensation, to be paid in quarterly installments, the said quarterly installments to be deposited in such bank or banks as the legal counselor concerned may indicate 6 months ahead of the time when such installments fall due.

I have also the honor to declare, with reference to the arrangements provided in the article above mentioned, that as far as practicable a legal counselor of British nationality will officiate at the trial of cases involving British subjects."

8. Taxation. "(b) British subjects shall be protected against taxation without legal sanction and against irregular or discriminatory methods of assessing or levying taxation; and such legal taxation as is properly payable by British subjects shall be enforced against them by no other process than that of action in the competent modern Chinese courts of justice.

(c) Municipal taxation shall be imposed upon British subjects only in accordance with duly authorized municipal regulations sanctioned by the Central or Provincial Governments in China. The proceeds of such municipal taxation shall in general only be expended on relevant purposes within the municipal area in question.

(d) No methods of assessing liability to taxation shall be employed except those prescribed by the duly promulgated laws, ordinances and regulations of China. In case of disputed assessments, the party concerned shall be entitled to have the amount of his levy determined by the competent modern courts in accordance with Chinese law.

(e) Tax agreements entered into with British subjects in their several capacities as merchants, firms, partnerships or companies, will be duly observed.

9. Arbitration. (1) The Chinese courts will recognize and if necessary secure performance of agreements entered into at any place by British subjects between one another or with other foreign nationals or with Chinese citizens for the settlement of civil or commercial controversies by arbitration. The arbitrators selected by the parties in accordance with such agreements may be of any nationality.

(2) The arbitration if held in China shall be conducted in accordance with the procedure prescribed by Chinese law.

(3) The Chinese courts will not entertain any application or claim which forms the subject matter of such an agreement for arbitration, but will enforce awards made in pursuance of such agreements unless the award is contrary to public order or good morals of or is vitiated on other grounds recognized by the general principles of law as understood in modern jurisprudence.

(4) The above provisions shall apply *mutatis mutandis* to agreements for arbitration entered into by Chinese citizens and the enforcement of the awards made in pursuance thereof by the British courts in Great Britain.

See also the attached letter: "With reference to article (blank) of the treaty concluded between us today, I have the honor to confirm Your Excellency's understanding that the Chinese arbitration law of (blank) has no application to arbitration agreements of the kind contemplated in the said article".

10. Rights in immovable property. "Any dispute regarding the amount of compensation to be paid shall be determined by reference to the competent administrative organ or the competent modern court of justice at the option of the British subject concerned in accordance with Chinese law".

11. Rights in immovable property. Exchange of notes. "In reaching their decisions in such cases the Chinese courts shall take into consideration the treaty provisions and laws and the customs and practices in various parts of China which existed at the time when the property rights were acquired".

12. Military service, forced loans, et cetera. "Subject to similar exemptions being enjoyed by Chinese citizen/s/ in Great Britain, British subjects in China shall not be subjected to any form of military service or to any tax or levy imposed as a substitute for military service or to military requisitions or contributions of any kind, nor shall they be liable or compelled to subscribe, directly or indirectly, to any public loan or to any other form of forced levy".

13. Treatment of companies. "So long as in Great Britain Chinese companies, firms, partnerships or corporations enjoy as regards taxation, the right to carry on business and access to the courts, treatment not less favorable than that accorded to the companies of the most favored foreign country, companies, firms, partnerships and corporations incorporated or organized in accordance with the laws of His Britannic Majesty and operating in China shall, provided they comply with the provisions of Chinese law relating to the registration of companies, be entitled to all the rights and privileges enjoyed by British subjects under this agreement, including the rights enjoyed in Chinese courts, whether as plaintiffs, complainants or defendants. Such companies, firms, partnerships or corporations and their branches, agencies or representatives shall not be subject to discriminatory treatment, and as regards national, provincial and municipal taxation shall only be taxed in proportion to the amount of capital actually employed respectively in China, in the province or in the municipality, or in respect of the profits and revenues which they have actually earned respectively in China, in the province or in the municipality".

14. Nondiscriminatory treatment. "Subject to reciprocity of treatment for Chinese citizens in Great Britain, British subjects shall enjoy in all matters for which this treatment provides all exemptions from Chinese jurisdiction which may be enjoyed by the nationals of any other country and shall be subjected to no discriminatory treatment in regard to taxation, judicial or any other matters for which this treaty provides, as compared with the nationals of any other country."

Johnson (2)

(Pages 778-782)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, March 28, 1931--4 p.m.
[Received March 29--5:32 a.m.]

Continuing my March 28, 10 a. m. The following comments concern the quotations therein:

1. Transfer of jurisdiction. The British presented this section to the Chinese as new matter, and I understand the Chinese have accepted it with the exception of the words in parentheses in the opening sentence. This section is a redraft by the British Foreign Office of the first part of article 1 of the American October 28 draft. The Chinese exception to the words in parentheses is an indication of their attitude on the subject of the reservation of criminal cases.
2. The declaration. This is section (e) of article 3 of the October 28 draft. The Chinese decline to accept the provisions of section (f), article 3, October 28 draft, either in the preamble or in the form of a declaration.
3. Lawyers and interpreters. This paragraph is new, to be added at the end of the text quoted in my March 17, noon, as paragraph 6. The British Foreign Office suggested it.
4. Lawyers' diplomas interpretation. Agreed minute. This will be an unpublished understanding between Lampson and C. T. Wang regarding British lawyers.
5. Legal counselors. The sentence which refers to Chinese legal counselors was inserted between sentences 1 and 2 of the text quoted in my March 17, noon, paragraph 2. There has been substituted for the last three sentences of the text quoted in the same telegram, paragraph 2, the two paragraphs commencing "In all cases" and ending with "provided in this article."

83/

Telegram in two sections.

6. Declaration attached to article on legal counselors. This covers the character of contract /s/ and includes a provision for legal counselors to officiate at the trial of cases which involve British subjects.

7. Taxation. It will be noted by the Department that paragraphs (b), (c), (d), and (e) are redrafts, which originated in the British Foreign Office, of the text quoted in my March 17, noon, paragraph 8.

8. Arbitration. This replaces the text quoted in my March 17, noon, paragraph 9, and was written into the redraft which originated in the British Foreign Office. The Department will take note of paragraph 2 of this text in regard to procedure and of the text of the letter to be attached thereto explaining that the law covered by this paragraph is not the present Chinese arbitration law. The inclusion of this paragraph, I understand, was insisted upon by the Chinese who said there might be a law setting up procedure at some future date. Paragraph 4 of this text, making the entire article reciprocal, should also be noted by the Department. Lampson informs me that the article in general describes a procedure which has long been recognized in Great Britain.

9. Rights in immovable property. The Department will note that the sentence regarding the temporary use in case of grave emergency of British property has been dropped. Lampson and I regarded this sentence as dangerous, since it might be interpreted to legalize and to invite temporary occupation upon payment of nominal compensation. At the instance of the British Foreign Office, the quoted sentence has been added to the text quoted in my March 17, noon, paragraph 10.

10. The exchange of notes regarding rights in immovable property. The quoted sentence is an amendment suggested by the Department's March 21, 3 p. m., paragraph (7), and has been added to the text of the exchange of notes just before the final sentence (see my March 17, noon, paragraph 10).

11. Military service, forced loans, etc. This is a British Foreign Office redraft of the text quoted in my March 17, noon, paragraph 12.

12. Treatment of companies. This is a British Foreign Office redraft of the text quoted in my March 17, noon, paragraph 13, and was discussed with and agreed to by the Chinese. I find it an improvement over other texts.

13. Nondiscriminatory treatment. The text in my March 17, noon, paragraph 15, has been redrafted. Lampson tells me that his Government is more or less committed to accept reciprocal treatment. In his opinion, we should have no difficulty in this phraseology if read in connection with all the other articles of the proposed agreement, since reciprocity is confined to matters which are provided for in the treaty.

14. These texts have been sent to the British Foreign Office for its comment and approval. The texts are, with the exceptions indicated, I understand, acceptable to the Chinese. It will be noted by the Department that Lampson has not yet touched upon the following articles in the October 28 draft: evocation, arrest, detention and trial; personal status matters; reservation of settlements and concessions; and portions on snapping in article 10 and on rights of residence and trade in article 13. Except for shipping and personal status, all of these are connected with the problems of reservation of criminal jurisdiction and reserved areas. Lampson is expecting comments from the British Foreign Office by March 31.

Johnson

(Pages 782-784)

Memorandum by the Minister in China (Johnson)^{84/}

Nanking, March 30, 1931.

Sir Miles Lampson, British Minister, called and said to me in strictest confidence that the question of legal guarantees having now been substantially cleared away he had decided that the moment had come when he should seek a personal interview with the Minister for Foreign Affairs for the purpose of finding out just where both governments stood in regard to the vital principles involved. He said that he had therefore seen the Foreign Minister at 8 a. m. this morning. He told the Minister for Foreign Affairs that as the latter was leaving Nanking and he was leaving Nanking also within the next three days he thought it wise that they have a personal conversation and lay their cards on the table so that they could see where both countries stood. He said that the British people placed a great deal of importance on the question of criminal jurisdiction. They were reluctant to see British nationals placed under the criminal jurisdiction of the Chinese courts. He, himself put more weight on civil jurisdiction where the great mass of British interests and trade would be affected, but unfortunately his Government felt differently on the subject and was firm in its intention that criminal jurisdiction should not be given up. Nevertheless he thought that it might be possible to bring the British Government to a conciliatory point of view in regard to this point, provided the Chinese Government were willing to make concessions in the matter of reserved areas. He was very anxious to know where the Minister for Foreign Affairs stood in this matter.

Dr. Wang stated that the Government's policy in regard to these questions had been laid before the Political Council which had decided that it could not make concessions in regard to co-judges, reservation of criminal jurisdiction or reserved areas.

Sir Miles stated that they discussed this matter at some length and that finally Dr. Wang stated that four areas were too many to be reserved. He thought that something might be possible in regard to Shanghai. Dr. Wang also stated that the Government would object strenuously to a 50 li zone as being too wide or to the mention of the Customs House at Shanghai in such a connection as this might lead others to stipulate for railway zones, et cetera, as being the centers of reserved areas.

British Minister informed Dr. Wang that of course the mere reservation of Shanghai was not good enough insofar as his instructions and the attitude of his Government were concerned; that the reservation of these areas had nothing whatsoever to do with politics, international or domestic. He did not see why Dr. Wang could not persuade his colleagues of this. These places were the points where large numbers of Americans had congregated for purposes of business and residence and no political complications could follow the reservation of these areas from Chinese jurisdiction. Dr. Wang repeated that four areas were too many but that he hoped it might be possible to meet the British Minister at least part way in the matter of Shanghai. Sir Miles stated that the mere reservation of Shanghai was not sufficient to meet the situation. The Foreign Minister replied that this would appear to deadlock the negotiations; that unless the matter was settled by May 5th there would be a great deal of trouble as the people had fixed their minds upon a settlement.

^{84/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported to the Department by the Minister in pars. 1 to 3, inclusive, of telegram dated March 30, 11 a. m., from Nanking, infra.

Sir Miles informed me that he told the Minister for Foreign Affairs that if he took that stand the responsibility for deadlocking the discussions must rest squarely with the Chinese as the British Government was ready and willing and anxious to negotiate for a mutually acceptable understanding on the whole question. He pointed out that the Chinese were rushing the matter in a way not customary among governments. He said he realized that the situation would be complicated but he must realize that foreigners would not be alone in any difficulties that might arise.

Sir Miles told me that he besought Dr. Wang to remember that he himself was without any personal ambition in this matter; that if it could be settled why so much the better, but if not it would make little difference to him. He hoped the Minister for Foreign Affairs would realize that both governments were trying to build a bridge which would safely carry both countries from the present to the new situation and that it was for the Chinese to do its share in the building as the bridge was being built from both sides.

Nelson Trusler Johnson

(Pages 784-786)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, March 30, 1931--11 a. m.
[Received March 31--7:04 a. m. 85]

My March 27, 11 a. m., paragraph (3).

[Here follows report of conversation of the British Minister in China with the Chinese Minister for Foreign Affairs based on memorandum printed supra.]

(9) The conversation thus ended. Lampson and I believe it indicates that C. T. Wang will try to obtain new instructions likely to bear fruit quickly.

(10) I said to Lampson that it did not seem necessary for me at this particular time to discuss these questions, that so far as we are concerned the discussions were suspended, not deadlocked, that the Chinese knew we were firm regarding these matters, and that if at this time I began any conversations in Nanking this might lead to a postponement of action along the line of his effort at accomplishment, with which I believed my Government to be in agreement. Therefore, I shall await further developments and shall keep the Department informed.

(11) Lampson is keeping the French and Japanese informed regarding the progress made as to legal guarantees. However, I do not think he has discussed other points so frankly with them as with me. I hope, therefore, that the above will be kept entirely confidential by the Department.

Johnson

(Page 786)

85/

Telegram in two sections.

The Minister in China (Johnson) to the Secretary of State[Paraphrase]Nanking, March 31, 1931--4 p. m.
[Received March 31--7:20 a. m.]

My March 30, 11 a. m. I have just seen Lampson, to whom I gave the information reported in my March 30, 1 p. m. He stated he was leaving on April 2 for Peiping, expecting to be away approximately 10 days to 2 weeks. I assume, therefore, that C. T. Wang has not gone beyond the point reported in my March 30, 11 a. m. Dr. Wang apparently wishes to see if we are disposed to go further than the British before he resumes negotiations with them here.

Johnson

(Page 787)

The Secretary of State to the Consul General at Nanking (Peck)[Paraphrase]

Washington, March 31, 1931--5 p. m.

18. For Minister Johnson: Your March 28, 10 a. m., and March 28, 4 p. m., from Nanking.

(1) Transfer of jurisdiction. After the words "as regards rights of appeal and in all other matters of procedure" in paragraph 2 (2), the Department feels it would be desirable that there be added these words, "both administrative and judicial" for the purpose of having a definite provision entitling American citizens to seek redress or relief from arbitrary acts by administrative officials through "administrative proceedings".

In paragraphs (3) and (4) under the same heading, there are reported provisions for British subjects to be subject only to modern courts of justice and police courts. On account of the frequent declarations of martial law in China, it is the belief of the Department that it would be desirable to have in an exchange of notes the above provisions made applicable at all times, even with martial law declared. It was for this reason that the Department inserted the words "at all times" in its draft of January 19.

(2) Lawyers and interpreters. Agreed minute. The Department prefers having this made the subject of an exchange of notes.

Stimson

(Pages 787 and 788)

Memorandum by the Minister in China (Johnson)^{86/}

Nanking, April 1, 1931.

In the course of conversation today, Sir Miles Lampson the British Minister, stated that he was concerned somewhat over the question of the term of validity of the treaty on extraterritoriality. He said that the article on this question for which we had stipulated provided for a period of ten years. He said that he and the members of his staff agreed so far as Shanghai was concerned, that the minimum period for which they should contend should be ten years. He asked me what I thought of this. I told him that I agreed; that at one time I had thought that the term of the agreement in so far as it applied to Shanghai, might be made indefinite or at least subject to some separate understanding between ourselves and the Chinese. I recognized that such an arrangement was dangerous as it left the Chinese free to agitate for a settlement of the question as soon as the Treaty was ratified and that doubtless it would be better for us to have a definite period during which Chinese jurisdiction within the Settlement would be excluded in order that interests at Shanghai might prepare for the change.

Sir Miles stated that he had not discussed this question in the course of negotiations up to date but that the matter would have to be approached very soon and he was anxious to get his ideas fixed on the subject before it came up. He added that in the matter of reserved areas we were asking for Hankow, Tientsin, Shanghai and Canton and he had been concerned somewhat as to the order in which these places might be abandoned in case we had to accept a number less than the four asked for.

With reference to Hankow he thought there was no great difficulty although he thought that some formula might be adopted reserving jurisdiction there only so long as jurisdiction was retained by other Powers. He had reference of course to the French and Japanese Concessions.

With reference to Tientsin he said that the matter seemed complicated to him for in 1927 his Government had promised to return the British Concession at Tientsin and in fact had proceeded so far in this matter as to have appointed a committee to adjust the matter with the Chinese, and he thought that in any discussion of this question the Chinese would revive the negotiations regarding the British Concession at Tientsin which had now been sleeping for some time.

I stated that I did not see how the question of reservation of jurisdiction was involved in the matter of Concessions, at least in the matter of relinquishing a concession; that if the British gave up their Concession at Tientsin we would all be in a position similar to that at Shanghai, and I thought that criminal jurisdiction might well be reserved in so far as Tientsin was concerned whatever the result of the negotiations.

Sir Miles agreed with me. He then asked me if I did not think we should stick out for the reservation of Tientsin and Shanghai as the most important places of the four named in our proposals and I said I felt that these two places should certainly be reserved, that we had come to look upon Tientsin and Shanghai as being in the nature of cities of refuge to be held for foreign merchants and other foreign residents in China during different transitional periods.

Nelson Trusler Johnson

(Pages 788 and 789)

^{86/}

Copy transmitted to the Department by the Minister without covering despatch; received May 12. Substance reported by the Minister in his telegram of April 10, 1931, 11 a. m.; received April 11, 7:17 a. m. (793.003/597)

Memorandum by the Chief of the Division of Far Eastern Affairs
(Hornbeck) of a Conversation With the Chinese Minister (C. C. Wu)

[Washington,] April 8, 1931.

Dr. Wu called and referred to the view which had been expressed by Mr. Hornbeck in the most recent conversations on extraterritoriality that no progress could result from discussing concessions asked by the Chinese in regard to comprehensive major points without first or simultaneously discussing the question of legal safeguards. Dr. Wu said that he was now in position to submit a new draft^{87/} in which the question of safeguards was fully taken care of. He said that this draft took full account of the points which have been under discussion between the British Minister and Mr. Hsu Mo of the Chinese Foreign Office. He said that he hoped that the Department would find this draft satisfactory.

Mr. Hornbeck said that we would be happy to examine the draft promptly.

S. K. Hornbeck

(Page 789)

✓ ✓
Memorandum by Mr. Ransford S. Miller of the Division of
Far Eastern Affairs

[Washington,] April 10, 1931.

The British Ambassador called upon the Secretary and Mr. Castle^{88/} today and gave orally the substance of an instruction which he had received from his Government relating to the measures which might be taken in dealing with the Chinese Government in case that Government should make unilateral denunciation of the treaties.

The Ambassador stated that his Government believed that, should the Chinese Government denounce the treaties as a unilateral act, their action would not be in the nature of a face-saving gesture such as was their Mandate of December 28, 1929 (declaring extraterritoriality abolished from January 1, 1930),^{89/} but would create a serious situation for the foreign government that would have to be faced.

As to means of meeting this situation, there had been suggested:
 (See Mr. Castle's memorandum of February 12, 1931.^{90/})

^{87/} Not printed.

^{88/} William R. Castle, Jr., Under Secretary of State since April 1, 1931.

^{89/} See telegram of December 28, 1929, from the Consul at Nanking, Foreign Relations, 1929, vol. II, p. 666.

^{90/} Memorandum, dated February 13, of a conversation with the British Ambassador on February 12; not printed.

First, resort to force by seizing customs houses.

The British Government believed that the use of force for the protection of foreign interests, which were widely scattered throughout China, would not only be impracticable but would not have the support of public opinion at home. Moreover, it was suggested that such a course would be incompatible with the Kellogg Pact.^{21/}

At this point, the Secretary suggested that, while the protection of foreign interests throughout China might be impracticable, and had not been considered, the protection of foreign interests in the foreign concessions was a different and much simpler matter.

As the second and third means that had been suggested, the Ambassador mentioned, (2) the threat of the withdrawal of friendship and good will, and (3) the withdrawal of financial assistance for reconstruction purposes. The British Government did not feel that either of the above courses would be effective in influencing the action of the Chinese Government; and, on the other hand, the Chinese were always prepared to respond to such measures with their familiar boycott.

The Secretary replied that he had not noted any keen interest on the part of either British or American financiers to make loans to China nor, on the other hand, any inclination on the part of the Chinese Government to make use of a Consortium.^{22/}

The Ambassador continued that, in the opinion of his Government, the real criterion of the situation was not whether the Chinese laws and administration of justice were satisfactory but whether the Chinese Government had acquired sufficient strength and stability to feel that they were able to denounce the treaties. When that time came, the British Government thought the wisest course would be to reach an agreement quickly and save as much as possible of foreign interests.

The Secretary asked the Ambassador what his Government would do at such a juncture concerning their Surge in China. Would they withdraw him or have him remain? The Ambassador replied that he had not considered this point nor the question of the withdrawal of any British forces in China.

It was agreed that the prospect that the National Convention would be postponed until July and the fact that the Chinese Minister here had recently presented a revised Chinese draft on extraterritoriality for discussion appeared to relieve the situation for the present.

(Pages 790 and 791)

21/

Treaty for the renunciation of war, signed at Paris, August 27, 1928, Foreign Relations, 1928, vol. I, p. 153.

22/

For text of consortium agreement of October 15, 1920, see ibid., 1920, vol. I, p. 576.

✓ ✓
Memorandum by the Minister in China (Johnson)^{93/}

Nanking, April 13, 1931.

I went to see the Minister for Foreign Affairs today and in the course of conversation he asked me what the American attitude on extraterritorial negotiations was. I said that the American Government had been sincerely anxious to reach an understanding in regard to this matter which would be satisfactory to both governments. I said that as far back as the original statement of Mr. Secretary Kellogg on this subject in January, 1927,^{94/} we had maintained our desire to settle this question on the basis of the gradual relinquishment of extraterritorial privileges. I said I thought there could be no question of our sincerity of purpose in this matter and that we were still ready to meet the Chinese provided that the terms of such agreement as might be signed would be on such a basis.

Dr. Wang stated that he had never assented to such a basis of negotiation, that as far back as the days of Dr. Schurman^{95/} he had advocated a complete and final abandonment of extraterritoriality. He compared this question to a surgical operation on a patient suffering from appendicitis saying that of course the patient would be hurt but that it would be better when everything was over. I said that modern surgery provided an anaesthetic so that operations were painless. I said that this was exactly what the United States was aiming at in its negotiations when it proposed that they should be based on a process of gradual relinquishment and that to this end my Government had proposed that in any agreement that might result certain areas should be reserved from Chinese jurisdiction; that criminal jurisdiction should not be given up at once and that the legal counselors should sit with the judges in the special courts provided for the trial of civil cases involving the rights of American citizens.

I said it seemed to me that there could be no doubt of the existence of a very deep and real feeling of friendship in the United States for China but that during recent years the minds of thinking Americans were filled with apprehension as to the future and as to the intentions of the Chinese. I said that little or nothing had ever been said by the Chinese in regard to what they were doing in preparation for the time when they would take over jurisdiction of the persons and property of American citizens, that all that we heard were public statements in the nature of threats. I said that there was a constant undercurrent coming principally from the Chinese themselves of an intimation that unless the foreign powers yielded completely and entirely to the wishes of the Chinese Government the situation that American merchants and others residing and carrying on their business in China would be one of danger, in other words American citizens would be penalized for the attitude of their Government. I said that this atmosphere of hostility and unfriendliness was not a good atmosphere for negotiations and that it was undermining good feeling in the United States toward China.

^{93/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in telegram of April 13, 1931, 4 p. m.; received April 14, 7:15 a. m. (793.003/602).

^{94/}

See telegram No. 28, January 25, 1927, 8 p. m., to the Charge in China, Foreign Relations, 1927, vol. II, p. 350.

^{95/}

Jacob Gould Schurman, Minister in China, 1921-25.

The Minister for Foreign Affairs said that he thought that Americans were too much influenced by British propaganda, that the American Chamber of Commerce in Shanghai was notoriously susceptible to propaganda originating in the British Chamber of Commerce. I stated that I felt there was little to this, that thinking Americans knew what value to place upon British statements regarding conditions in China, that this feeling came from statements made directly by Chinese to Americans, both officials and private citizens. (Note: I had in mind Dr. Wang's own public statements and statements made in private conversation by Chinese to American citizens.) I said that all of this was going back home to responsible business men all over the country and to senators and congressmen and that it was having its effect on the attitude of these men toward China and the Chinese. I said that the treatment accorded to Americans had also had its effect; that the outrageous treatment of Americans in Nanking in 1927^{96/} had not been without its effect upon thinking opinion in America. I said that it was regrettable that the Chinese Government was not attempting by word or deed to allay this feeling of apprehension and inspire Americans with a feeling of confidence as to the future.

Dr. Wang stated that there was no reason for such apprehension; that he felt sure Americans would be able to carry on their activities without difficulty. The conversation was interrupted here as both of us had engagements.

Nelson Trusler Johnson

(Pages 791-793)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, April 15, 1931--5 p.m.

23. For Minister Johnson: Your April 10, 11 a.m., from Nanking.^{27/}

(1) For the sake of giving both foreigners and Chinese a period of freedom from agitation regarding the extraterritorial question, and an opportunity for them to devote attention to other matters of importance, the Department believes the term of validity should be 10 years. It is believed that we have a strong argument to ask for such a term of validity, because it now appears that the Chinese will get in the new treaty almost everything they are seeking concerning the abolition of extraterritoriality.

(2) As to the relative importance of Shanghai, Tientsin, Hankow, and Canton as reserved areas, the Department sees their importance in the above order, with Shanghai the most important, Canton the least. The views of the Department, therefore, are in accord on this question with your remarks to the British Minister.

Stimson

(Page 793)

^{96/}

See Foreign Relations, 1927, vol. II, pp. 146 ff.

^{97/}

See footnote 86, p. 788.

The Secretary of State to the Consul General at Nanking (Peck)[Paraphrase]

Washington, April 17, 1931--6 p. m.

25. For Minister Johnson: Department's 19, April 9, 2 p. m., to the Consul General at Nanking.

(1) The Chief of the Division of Far Eastern Affairs will be absent from the Department until April 23, as he is proceeding to Portal, North Dakota, to meet the King of Siam. During Hornbeck's absence, the Department is arranging for Joseph E. Jacobs to discuss with the Chinese Legation the wording of the 12 articles of the extraterritoriality draft handed by C. C. Wu on April 8 to the Department. These articles for the most part appear substantially acceptable, provided that additional articles can be agreed upon later to cover matters not therein provided for. Thus the Department hopes an accord may be reached with Wu regarding the legal safeguards which were discussed last month at Nanking between the British and Chinese negotiators, thereby bringing the negotiations here abreast of the point which the Sino-British negotiations have already reached.

(2) When Hornbeck returns, the Department will, should the circumstances warrant, start discussing with the Chinese Minister the major issues involved and hopes thereafter to press the American negotiations vigorously forward either here or in Nanking, as required by the circumstances.

(3) The Department desires you to give Sir Miles Lampson all possible and proper practical aid and support when he renews conversations at Nanking with Dr. C. T. Wang regarding the remaining vital issues. You may confidentially inform Lampson of the Department's willingness to give support in the defense of the position which the British Government may take in refusing to enter into an agreement conceding to China jurisdiction at Shanghai and/or the other ports which have been under consideration. If you feel at any time that discussion with C. T. Wang of any of the vital issues will be helpful toward successfully concluding our mutual negotiations, the Department wishes you to do this. It is the Department's hope that treaties identical or similar in their provisions may be concluded between China and Great Britain and between China and the United States.

(4) Please inform the Department as to present indications regarding the opening or the postponement of the Chinese National People's Convention. The Department wishes to be kept fully informed as to the British-Chinese negotiations and will be glad to have suggestions or comments.

Stimson

(Pages 794 and 795)

98/

Not printed; it discussed Mr. Hornbeck's conversation with the Chinese Minister on April 8 (p. 789) and the revised Chinese draft agreement submitted by Mr. Wu (793.003/596).

Memorandum by the Minister in China (Johnson)^{99/}

Nanking, April 18, 1931.

I called upon Sir Miles Lampson, the British Minister, today and he told me that he had received instructions from London covering new amendments which were being incorporated in the texts already agreed upon between himself and Wang. He said that he had received word that early in the month the British Foreign Minister had handed to the Chinese Minister in London an Aide-Memoire outlining conditions under which British Government was prepared to relinquish its extraterritorial rights in which the British Foreign Minister had stated almost in so many words that British Government was prepared to give up criminal jurisdiction provided the four areas of Shanghai, Tientsin, Hankow and Canton were excluded from the new treaty. British Minister stated that in view of this fact he had felt justified in authorizing Mr. Teichman in the discussions that he was having with Mr. Hsu Mo to take up without commitment the question of an article covering arrests, imprisonment, detention and bail. He promised to give me the new texts as soon as they were available.

Nelson Trusler Johnson

(Page 795)

The Minister in China (Johnson) to the Secretary of State

Nanking, April 19, 1931--2 p. m.

[Received 3:30 p. m.]

[General] The Department's number 25, April 17, 6 p. m. to the American Consul at Nanking.

1. British Minister conferred with Wang yesterday afternoon and as a result thereof has communicated following amendments which he has introduced by agreement with Wang into the previously prepared texts.

2. My March 17, noon, paragraph number 2, legal counselors. Sentence beginning "Similarly the legal counselors shall be authorized" changed to read "Similarly the legal counselors shall be authorized to receive any other observations or complaints, including such as may be caused by domiciliary visits, expropriations, requisitions, or arrests, et cetera, which observations shall be similarly dealt with". Also my March 28, 10 a. m., paragraph 6, section between "in both the high and district courts" and "will be suspended until the observations" changed to read "and judgment shall be reserved until he has made, within 3 days after the conclusion of the trial, such observations in chambers as he may desire to the judges, and, in the event of the judges' failing to give them due consideration, the execution of the judgment".

^{99/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11.

3. My March 28, 10 a. m., paragraph 13, treatment of companies, changed to read:

"Companies, firms, partnerships and corporations incorporated or organized in accordance with the laws of His Britannic Majesty and operating in China shall, provided they comply with the provisions of Chinese law relating to the registration of companies, be entitled to all the rights and privileges enjoyed by British subjects under this agreement, including the rights enjoyed in Chinese courts, whether as plaintiffs, complainants or defendants. Such companies, firms, partnerships or corporations and their branches, agencies or representatives, shall not be subject to discriminatory treatment, and as regards national, provincial and municipal taxation shall only be taxed in proportion to the amount of capital actually employed respectively in China, in the province or in the municipality, or in respect of the profits and revenues which they have actually earned, respectively, in China, in the province or in the municipality. Reciprocally Chinese companies, firms, partnerships or corporations shall enjoy in the United Kingdom, as regards municipal [taxation?], the right to carry on business and access to the courts, treatment not less favorable than that enjoyed by companies, firms, partnerships or corporations of the most favored foreign country."

4. My March 28, 10 a. m., paragraph 2, transfer of jurisdiction. Second sentence of second paragraph changed to read "In all legal proceedings and in all matters relating to the administration of justice by the courts British subjects shall enjoy treatment not less favorable than that accorded to Chinese citizens."

5. My March 28, 10 a. m., paragraph 14, nondiscriminatory treatment changed to read "British subjects shall enjoy in all matters for which this treaty provides all exemptions from Chinese jurisdiction which may be enjoyed by nationals of any other country and shall be subjected to no discriminatory treatment in regard to municipal, judicial or any other matters for which this treaty provides, as compared with the nationals of any other country. Reciprocally Chinese citizens shall enjoy in the United Kingdom in respect of above matters treatment not less favorable than that enjoyed by subjects or citizens of the most favored foreign country."

6. My March 17, noon, paragraph 10, rights in immovable property and expropriation. First paragraph unaltered. First sentence, second paragraph, unaltered. Second sentence of second paragraph changed and made a separate paragraph. This new paragraph and succeeding paragraph are under consideration by British Foreign Office. Paragraph quoted in paragraph 10 of my March 28, 10 a. m. unaltered. Following new paragraph added:

"Where such cases are brought before the modern courts of justice the provisions of articles (Special Chambers) and (legal counselors) of the present treaty covering the hearings of cases in which British subjects are involved as defendants will apply."

7. My March 28, 10 a. m., paragraph 9, arbitration. Paragraph (1) changed to read:

"The Chinese courts will recognize, and if necessary secure performance of, agreements wherever entered into by British subjects between one another or with other foreign nationals or with Chinese citizens for the settlement of civil or commercial controversies by arbitration. The arbitrators selected by the parties in accordance with such agreements may be of any nationality."

Paragraph (2) unchanged. Paragraph (3) first portion changed to read:

"The Chinese courts will not entertain any application or claim the subject matter of which falls within the scope of such an agreement for arbitration."

Paragraph (4) has been dropped. Letter now reads:

"With reference to article (blank) of the treaty concluded between us today, I have the honor to confirm Your Excellency's understanding that the Chinese mediation law of January 20, 1930, has no application to arbitration agreements of the kind contemplated in the said article."

Johnson

(Pages 795-797)

The Minister in China (Johnson) to the Secretary of State

Nanking, April 19, 1931--4 p. m.
[Received April 20--10:10 p. m.]

The Department's 25, April 17, 6 p. m. to the American Consul
[General] at Nanking and my April 19, 2 p. m.

1. The following draft articles covering military service, arrests and shipping have been worked out ad referendum between British Minister and Dr. Wang neither side being committed to their acceptance.

2. Military service, forced loans, et cetera. British subjects in China shall not be subject to any form of military service or to any tax or lev imposed as a substitute for military service or the military requisitions or contributions of any kind, nor shall they be liable or compelled to subscribe, directly or indirectly to any public loan or to any other form of forced levy. Reciprocally Chinese citizens shall enjoy in the United Kingdom similar exemptions in respect of all the above matters."

3. "Arrest, imprisonment, detention, bail, et cetera. [1] Sub-paragraph (2): Except in cases of flagrante delicto British subjects may not be arrested, detained or imprisoned except upon an order formally issued by a modern court of justice specifically stating the legal grounds on which and the offense for which action is authorized. They shall within 24 hours after arrest, exclusive of legal holidays, be brought before the nearest modern court of justice competent to deal with the case for hearing. If there is no competent modern court which can be reached in this space of time, any British subject thus arrested will be brought before the nearest competent modern court with the least possible delay.

1/
Telegram in two sections.

(2) Any British subject arrested or otherwise detained shall be permitted to communicate immediately with the nearest British Consular officer, and he is to be afforded all possible facilities to that end. British Consular officers or their representatives shall be permitted to visit any British subject under detention at all reasonable times.

(3) British subjects under detention or sentence of imprisonment will only be detained or imprisoned in modern detention houses or modern prisons or in other premises suitable for their detention or imprisonment.

(4) British subjects serving sentences of imprisonment may be visited by British Consular officers or their representatives at all reasonable times [subject to the prison regulations/]. (Note. Words in brackets are under consideration. British want it.)

(5) If any British subject charged with offense the maximum penalty for which does not exceed imprisonment for 6 months makes application before sentence is given for the imposition of a fine instead of imprisonment, the Chinese court will grant such application. In each of such cases the fine imposed will not exceed a maximum of \$1,000. In like manner if any British subject charged with any offense punishable under the Chinese criminal code by imprisonment not exceeding 1 year or fine makes application before sentence is given for the imposition of a fine instead of imprisonment, the Chinese court will grant such application. In each of such cases the fine imposed will not exceed a maximum of \$3,000.

6. Except in the case of crimes punishable by death or imprisonment for life, immediate release on bail will on application be granted to any British subject arrested or detained, unless the court has good reason to believe that the accused may flee from justice after release. The amount of bail will be reasonably proportionate to the offense alleged. Such facilities for release on bail will be granted to appellants until the sentence of the final Appellate Court is given.

(7) British subjects shall not be subject to imprisonment for debt. If, however, it is shown that a debtor is taking action which will render execution on his goods in China impossible, or if execution cannot be safeguarded by any other means, he may be detained in the manner provided for such cases by Chinese law, in which case the provisions of paragraphs 2 and 3 of this article provides [sic/].

(8) Except in such cases as must under the relevant Chinese law be heard in camera, all hearings of cases involving British subjects will be open to the public and all persons interested in the hearings may be present as public spectators. (Note. The wording of the first part of this sentence is still under consideration)".

4. "Shipping. British commercial vessels in Chinese ports or territorial waters will comply with such nondiscriminatory and legally enacted and duly promulgated Chinese regulations as are applicable to all vessels. They will not be subject to any form of commandeering or requisition, nor will they be compelled to carry Chinese troops or Chinese military supplies. Such vessels will not be inspected, searched, boarded, or subjected to any kind of restraint by Chinese armed military authority except in the case of special emergency and only after due notification to and by arrangement with the captain of the vessel or the officer in charge. They may not be boarded by Chinese police nor may any person be arrested on board any such vessel except upon a warrant formally issued by a modern court of justice specifically stating the legal

grounds on which action is authorized. In the absence of such a warrant, Chinese police may only board the vessel in case of special emergency and only after due notification to and by arrangement with the captain of the vessel or the officer in charge. In general the treatment accorded to British commercial vessels shall be in conformity with that accorded under recognized international practice by maritime nations to vessels of other countries in their ports or territorial waters. The present authority of the Chinese Maritime Customs with respect to British commercial vessels, including authority to search such vessels for the prevention of fraud or smuggling, shall remain unimpaired."

Johnson

(Pages 797-799)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, April 20, 1931--11 a. m.

[Received April 21--6 a. m.]

(1) My April 19, 2 p. m., and April 19, 4 p. m. Regarding the amendments and the new drafts which I communicated therein, I have the following comments to make.

(2) Transfer of jurisdiction. In this section, second sentence of paragraph (2), the amendment is self-explanatory and appears to me to improve the text.

(3) Legal counselors. The first amendment is merely an addition of "expropriations" to the list of clauses which are subject to the jurisdiction of legal counselors. The second amendment places the phrase "in chambers" after the word "observation/s". This was done at the British Foreign Office's suggestion, in view of the usage of this term in British court practice.

(4) Arrest, imprisonment, detention, bail, etc. All of this is new matter and is predicated, as the Department will note, upon the relinquishment of criminal cases. Please see, in this connection, my March 30, 11 a. m., paragraph (1).^{2/} Lampson has informed me that the British Foreign Secretary has handed to the Chinese Minister in Great Britain an aide-memoire which outlines the conditions under which the British Government would give up extraterritorial rights. This states virtually that the British Government would be ready to yield jurisdiction in criminal cases if the Chinese Government will concede the reservation of the Shanghai, Tientsin, Hankow, and Canton areas from the jurisdiction of Chinese courts. Lampson felt justified, under these circumstances, in taking up this article with C. T. Wang. The draft referred to London without commitment on Lampson's part is the result of these discussions. In this draft

^{2/} Telegram in two sections.

^{3/} Par. (1) not printed; text based on first two paragraphs of the Minister's memorandum of March 30, p. 784.

the 5th paragraph contains new matter in regard to payment of a fine in lieu of imprisonment.

(5) Arbitration. The change in paragraph (1), it will be noted by the Department, makes the agreement apply to arbitration agreements entered into anywhere. While the amendment to paragraph (3) is an improvement, the Department will surely note that as the text of this article stands at present all reference to reciprocal treatment has been dropped. The letter attached in explanation of section 2 of this article specifically states the Chinese law which is excluded from this article's provisions.

(6) Rights in immovable property. The Department will observe that as it now stands this article retains the paragraphs in regard to the temporary occupation of the property of British subjects if adequately compensated. See in this connection my March 28, 4 p. m., paragraph (9). Lampson tells me that the British Foreign Office is undecided as to this point and is inclined still to believe it should be retained as part of the text. Lampson and I hold the same views as reported in paragraph (9) of my March 28, 4 p. m. A new paragraph extends to this kind of complaint the provisions of articles on Special Chambers and legal counsellors.

(7) Military service, forced loans, etc. The Department will note that the reciprocal provision has been placed at the end of the paragraph.

(8) Companies. To me the new wording of this paragraph seems to be an improvement over the old, especially in regard to the reciprocal provision, which is on a most-favored-nation basis.

(9) Nondiscriminatory treatment. The Department will note this paragraph has been made reciprocal, with reciprocity on a most-favored-nation basis.

(10) Shipping. Until the recent conversations the Chinese have been averse to discussing at all paragraph on shipping. This draft resulted from the last discussion Lampson had and does not represent the British Foreign Office's views. The text appears acceptable to me, though I am not certain the British Government will accept it.

(11) Lampson informs me that he has agreed tentatively to delete the second sentence of the paragraph on legal counselors (see my March 28, 10 a. m., paragraph 6, and March 28, 4 p. m., paragraph (5)) and to place it in an attached declaration. Deletion of the second paragraph of this declaration is, I am also informed, being considered (see my March 28, 10 a. m., paragraph 7), in which case an alternative assurance would replace it in the form of an agreed minute that one legal counselor at least will be British. The Chinese, I understand, already are preparing regulations to employ legal counselors and in fact have made a list naming the men they intend approaching with an offer of employment as such. Lampson and I have not been able to find out how many legal counselors the Chinese propose to employ, though the British Minister has heard a report of their intention to employ 5. This number appears to us to be inadequate for the 10 Special Chambers in the agreement. However, this is all rumor. There is the question whether or not assurances should be obtained from the Chinese that they will employ British and/or American nationals as legal counselors. In the text as it now stands there is nothing to give any such assurances. The Chinese evidently desire the deletion of the provision which requires the British legal counselor to be present at the trial of cases in which British subjects are involved. In discussing with Lampson the importance of this provision, I pointed out in general that, assuming an American legal counselor were not available at the time a case involving an American should

come on for trial, it would be regrettable if the case had to be put off until such a counselor should become available. I expressed the view that it would be better for the case to proceed with the presence of a legal counselor of some other nationality than to have no legal counselor at all or delay.

(12) Lampson discussed the reserved areas with C. T. Wang, but found the latter unwilling to make any concessions or to go beyond what he did in the conversation I reported in my March 30, 11 a. m. The offer (see paragraph 3⁴ of this telegram) was renewed by Dr. Wang, but Lampson said this was unsatisfactory, and he insisted upon the exclusion of all four areas. He gave Wang a copy of the British aide-memoire, handed to the Chinese Minister in London, to support his position. Lampson is uncertain about the next step. There remains to be mentioned the question of the term of the agreement.

Johnson

(Pages 800-802)

✓ ✓
Memorandum by the Minister in China (Johnson)^{5/}

Nanking, April 21, 1931.

On his own initiative this afternoon Dr. Frank Lee, Vice Minister for Foreign Affairs, raised the question of extraterritoriality. He asked me how the negotiations were progressing and referred to the fact that I had seen the Minister for Foreign Affairs yesterday. I said that my conversation with Dr. Wang had been about quite another matter but that so far as I knew the negotiations at Washington were proceeding satisfactorily. I said that the negotiations involved a discussion of legal guarantees. Dr. Lee asked me whether it was true as he had heard that the American terms were the same as the British. He said that the British negotiations contained a demand that the four ports of Shanghai, Tientsin, Hankow and Canton be excluded from Chinese jurisdiction, and that practically everything had been settled except this question and the question of criminal jurisdiction. I said that the American terms were the same as the British, that we had asked for the exclusion of the four ports in question in order that a transition time might be afforded for American interests in those places to adjust themselves to the new conditions about to be imposed.

^{4/} Par. (3) not printed; text based on third paragraph of the Minister's memorandum of March 30, p. 784.

^{5/} Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported to the Department by the Minister in par. 1 of telegram of April 21, 1931, 6 p. m., infra.

Dr. Lee stated that he knew that Dr. C. T. Wang had informed Sir Miles in all seriousness that he could not take to the Government any proposal for the exclusion of all four areas from Chinese jurisdiction but that he was prepared to put before the Government a proposal for the exclusion of Shanghai and that he thought that something might be accomplished in regard to this.

He said that Dr. Wang had his back to the wall and that the fifth of May would have to see something accomplished; that if Dr. Wang could not present signed treaties of a satisfactory character by that time he would have to resign.

I told Dr. Lee that insofar as Americans were concerned they were very much worried as to the future; that all they heard from the Chinese side in connection with what was being done in preparation for the relinquishment of extraterritorial rights were threats as to what would happen if the foreign powers did not yield to Chinese desires in the matter of extraterritoriality.

Dr. Lee stated that he did not believe there would be any hostile action such as boycotts, et cetera, that if treaties were not signed the Chinese Government would either on May 5th or the day before act unilaterally by denouncing the extraterritorial provisions of the treaty and setting up the necessary judicial machinery for handling foreign cases.

Dr. Lee asked me whether the United States would be prepared to go as far as the British and I said I was sure that we would; that it was my hope that the two nations might sign identical treaties on the same day. Dr. Lee expressed himself as being very gratified to hear that, although he said that it had been his hope that we would lead the way and sign first. He said that the French Minister had informed Dr. Wang that France would follow Great Britain, that France was already negotiating to put the Mixed Court in the French Concession on the same footing as the court in the International Settlement. He expressed the belief that if Great Britain, the United States and France signed agreements then Japan could not hold out. Dr. Lee once more emphasized the fact that Dr. Wang had his back to the wall and that something would have to be accomplished before 5th May.

Nelson Trusler Johnson

(Pages 802 and 803)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, April 21, 1931--6 p. m.
[Received April 22--11:40 a. m.]

My March 30, 11 a. m., and April 20, 11 a. m., paragraph (12).

[Here follows report of a conversation with the Vice Minister for Foreign Affairs based on memorandum of April 21, 1931, printed supra.]

6/

Telegram in two sections.

(2) As to French policy, the French Minister is, I believe, very liberal. M. Wilden, I understand, has been urging the Government at Paris to follow British and American policy. He has been troubled, I know, as to the status of the French Concession in Hankow. Wilden has told me that the Japanese Government is urging the French to remain firm; and that the Japanese are prepared to use all force necessary to protect their own Hankow Concession. Wilden has expressed anxiety lest the French Government yield to pressure from Japan.

(3) The Japanese do not seem to be in any hurry regarding negotiations. Their Charge, Shigemitsu, who has been called to Tokyo for consultation, expects to be back about May 1.

(4) The Department has been kept fully informed of the British negotiations and has been sent the complete texts as they were worked out. In my view, if we are able to get an agreement such as has been advanced so far, with a provision to exclude from the scope of the agreement the city of Greater Shanghai for 10 years at least, this should satisfy us. The Department, in its 20, April 13, 5 p. m., to the Consul General at Nanking, ^{7/}asked me for comment on the statement by C. T. Wang on April 10. Other than to say I believe he made this statement in all seriousness, I am at a loss as to what comment to make. I do not have any reason to believe that unilateral action will not be taken by the Chinese Government, as Wang foretold, if the present negotiations fail to result in something tending toward abandonment of extraterritorial rights by the powers. It is said that we can afford to stand pat and permit the Chinese to denounce the treaties, for they would not risk taking steps in actual violation of treaty terms. However, all the Chinese need do is to wait until the British and American treaties are up for revision, respectively, in 1933 and 1934, when they can declare them annulled and decline to negotiate regarding extraterritoriality. We at least appear at the present time to be in a position to obtain their signature to an agreement regarding the question providing certain legal guarantees to our citizens. After 1934 the chances of effecting such an agreement seem to be small indeed. The Foreign Office, I think, is counting on this. The statement has been made that we should hesitate at making an agreement with the Nanking Government, for it likely will be short lived. At present the only serious opposition to this Government seems to be communistic, which, if successful, would not promise the survival of the existing treaties or the making of new and satisfactory treaties concerning the matter. A consideration of policy favoring the signing at this juncture of a treaty is the probability that such action would reinforce the Nanking Government, thus tending to stave off its downfall and the substitution therefor of another which would in all likelihood be far more inimical to our cultural and commercial interests in China.

Johnson

(Pages 804 and 805)

^{7/} Not printed.

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Johnson

(Pages 804 and 805)

^{2/} Not printed.

Memorandum by the Minister in China (Johnson)^{8/}

Nanking, April 22, 1931.

Dr. Frank Lee, Vice Minister for Foreign Affairs, called upon me this afternoon and stated that he had reported our conversation of yesterday to Dr. Wang who had expressed himself as being gratified to learn that we were prepared to go as far as the British in the matter of extraterritoriality. He said that this morning they had appeared before the Commission on Foreign Relations at which Dr. C. T. Wang, Dr. Wang Chung-hui, Dr. H. H. Kung, Sun Fo and Chen Li-fu (the latter secretary general to the Central Committee of the Kuomintang) had been present. Dr. Lee referred to Mr. Chen as the Stalin of China.

Dr. Wang made his report to the Commission on the present state of extraterritorial negotiations and stated that the negotiations now hinged upon the insistence of the British on the exclusion of the four ports, Shanghai, Tientsin, Hankow and Canton. He said that in the discussion that followed the members of the Committee took the stand that insofar as Hankow was concerned the British had relinquished their concession, while the Americans had no concession there; that at Tientsin the British had promised to give up their concession, while the Americans had no concession. They pointed out also that at Canton during the great seamen's strike the British promised to give up their concession on Shameen but had been deterred by the fact that the French had refused. Therefore, argued they, there could be no reason for a demand on the part of the British or ourselves that these three places be exempt from the scope of the agreement. In regard to Shanghai they could perceive some reason in the request for its exclusion and they were prepared to consider the question of that exclusion for a limited period of time.

I said that I wanted to make it very clear that the existence or non-existence of concessions had nothing to do, so far as we were concerned, with the question of reserving these areas from the scope of the agreement. What we had in mind was the fact that the largest number of American business and other interests were congregated at these places and it was on this account and because we believed that these large and active interests should be given time to adjust themselves to the new conditions about to be imposed on them that we were asking the exclusion of these areas from the scope of the agreement.

Dr. Lee said that the members of the Committee could not, however, dismiss the idea that the two matters were related and Dr. Wang had been loath to press the matter for fear of precipitating a deadlock. Dr. Lee stated that Dr. Wang Chung-hui had expressed himself as being hopeful that the special chambers would be functioning within six months and that prominent and reputable lawyers in several countries had already been approached with a view to serving as legal counsellors. He said they expected to engage six such counsellors, one of them to be Chinese, and that the Chinese Minister in Washington had instructions to approach a well known American lawyer with an offer of one of the places. Dr. Lee said that Dr. Wang was instructed to report further to the Committee next Friday regarding the progress of negotiations.

Nelson Trusler Johnson

(Pages 805 and 806)

^{8/} Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported to the Department by the Minister in par. 1 of his telegram of April 23, 1931, 9 a. m., from Nanking, infra.

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, April 23, 1931--9 a. m.

[Received 9:50 a. m.]

My April 21, 6 p. m.

[Here follows report of a conversation with the Vice Minister for Foreign Affairs based on memorandum of April 22, 1931, printed supra.]

(2) The draft of article 9 as suggested in the Department's 12, March 14, 4 p. m., to the Consul General at Nanking, seems to Lampson and me to be an excellent substitute for the former draft of this article, the wording of which may well have given the Chinese the notion that we were excluding the concessions.

(3) Lampson and Wang Chung-hui the other day had a conversation during which the question of the reserved areas came up for discussion. Dr. Wang was adamant in opposition to the exclusion of all four of the ports, but he intimated that regarding Shanghai something might be done for a limited period. He also brought up the point that the existence of foreign concessions at Hankow, Tientsin, and Canton was an argument against their exclusion from the scope of the agreement. Lampson told him that the existence of British Concessions at any of these places had nothing to do with the British position and that the British offer still stood concerning them. Lampson told Dr. Wang Chung-hui that the British Government's instructions were to insist upon the exclusion for a period of 10 years of the four ports. I am told by Lampson that he believes the Chinese will yield in the cases of Shanghai and Tientsin.

Johnson

(Pages 806 and 807)

The Minister in China (Johnson) to the Secretary of State

Nanking, April 23, 1931--4 p. m.

[Received April 23--2:20 p. m.]

1. British Minister has just given me following information showing the number of the articles in the draft treaty so far discussed as agreed upon with Hsu Mo.

2. Article 1--Transfer of jurisdiction (agreed), article 2--Special Chambers (agreed), article 3--Legal Counselors (agreed), article 4--Lawyers and Interpreters (agreed), article 5--Arrests, et cetera, article 6--Taxation (agreed), article 7--Arbitration (agreed), article 8--Rights in immovable property (agreed), article 9--Immunity of premises, et cetera (agreed), article 10--Military requisitions and forced loans (agreed), article 11--Shipping, article 12--Companies (agreed), article 13--Pending cases (agreed).

2/
See par. (6) (c), p. 757.

One more to be numbered: Nondiscriminatory treatment (agreed), British protected persons (agreed).

Here will follow the articles not yet dealt with, namely, evocation, rights of residence and trade, personal status, excluded areas, publication of codes, continuance of existing treaties, authoritative text, duration and ratification.

Then follow: Declaration regarding the Chinese courts (agreed), declaration regarding the judges of the Special Chambers (agreed), declaration regarding legal counselors, exchange of notes regarding immovable property (agreed), letter regarding arbitration law (agreed), agreed minute regarding immunity of courts from extenuating interference, legal counselor of British nationality and lawyers.

3. At the suggestion of the British Foreign Office the long article about legal counselors is being cut up into eight separate paragraphs beginning "to each, et cetera"; "judicial authorities, et cetera"; "a legal counselor need not, et cetera"; "the legal counselor shall serve, et cetera"; "the legal counselor shall be authorized, et cetera"; "similarly, et cetera"; "in all cases, et cetera"; "the Chinese courts, et cetera".

4. The precise form of articles 8 and 10 has not yet been settled. The British Foreign Office still considering temporary occupation in the former and reciprocity in the latter. But substance agreed upon.

5. Everything not marked "agreed" is still without commitment.

Johnson

(Pages 807 and 808)

Memorandum by the Minister in China (Johnson)^{10/}

Nanking, April 23, 1931.

Dr. Frank Lee, Vice Minister for Foreign Affairs, called upon me this afternoon. He stated that he had reported the substance of our conversation of April 21st to Dr. C. T. Wang, Minister for Foreign Affairs, who had expressed himself as being much gratified to learn that I hoped that the British and American governments might simultaneously sign identical treaties dealing with extraterritoriality. Dr. Lee stated that Dr. C. T. Wang was very optimistic as to the outcome of negotiations and that he had asked him to come to me to inquire what the wishes of the United States Government were; did the United States wish to sign a treaty in Washington or here in Nanking? I said that we were quite indifferent I was sure as to where we signed, that we had

^{10/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in his telegram of April 23, 1931, 5 p. m., from Nanking; received April 23, 8:50 a. m. (793.003/615)

only been anxious not to do anything to offend Dr. C. C. Wu. Dr. Lee stated that Dr. Wang's optimism was such that he believed that a treaty would be signed within a very few days and that he, therefore, thought that I should make inquiry of the Department of State and if necessary obtain authorization to sign so that the treaty could be completed here in Nanking simultaneously between China and the United States and Great Britain. I told Dr. Lee that I would make inquiry and that I would inform him of the views of my Government.

Nelson Trusler Johnson

(Page 808)

The Minister in China (Johnson) to the Secretary of State

Nanking, April 24, 1931--noon.
[Received April 24--9:25 a. m.]

Norwegian Minister yesterday effected an exchange of notes with Minister for Foreign Affairs,^{11/} whereby Norway agrees to give up extraterritorial rights on most-favored-nation basis if and when powers participating in Washington Conference on Pacific affairs relinquish such rights. I understand the Netherlands is negotiating for a similar exchange.^{12/}

Johnson

(Page 809)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, April 25, 1931--noon.

27. For Minister Johnson: Your April 23, 9 a. m.; April 23, 4 p. m.; and April 23, 5 p. m.,^{13/} all from Nanking.

(1) While previously and at present prepared to let the British lead in the extraterritoriality negotiations, the Department is not yet willing to go so far as even to discuss the inclusion of the Shanghai area in the new treaty's scope of application. It is the feeling of the Department that Tientsin's exclusion should also be insisted upon and that a strong effort should be made to

^{11/} League of Nations Treaty Series, vol. cxix, p. 9.

^{12/} This exchange was effected also on April 23, 1931 (793.003/624).

^{13/} Latter not printed; see footnote 10, p. 808.

exclude Hankow and Canton. Further, for the reasons given in the Department's 23, April 15, 5 p. m., to Nanking, it is not yet ready to consider less than 10 years for the period of validity.

(2) The Department has been and still is willing to meet the Chinese Government's wishes regarding the place for signature of the new treaty. However, in view of the issuance by the Chinese Government to Minister C. C. Wu of full powers presented to the Department in 1928^{14/} and of the position which the Chinese Government and Minister here recently took when the Department intimated its wish for transfer of the negotiations to Nanking (reference the Department's 12, March 14, 4 p. m., and 14, March 16, 5 p. m., to Nanking, and your March 19, 7 p. m., from Nanking^{15/}), it is the Department's feeling that if and when action is taken to issue full powers to you, this should be predicated upon the Department's receiving a formal request, communicated through Minister Wu, from the Chinese Minister for Foreign Affairs, rather than a mere oral suggestion to you, as your April 23, 5 p. m., reported.

(3) The Department surmises that the Foreign Minister is trying to precipitate final action by either Great Britain or the United States, or by both, by stressing the date of May 5 and by intimating to each one that the other is about to sign. While continuing to do everything possible to expedite the successful termination of the negotiations, the Department is of opinion that, although it should be possible to reach a complete accord soon, yet, after all issues and the substance of the agreement have been settled, it will be necessary carefully to scrutinize the text. This will require time. As the American and British Governments are both making sincere efforts in meeting Chinese wishes regarding the questions involved, the Department deprecates the Chinese Government's efforts to rush matters in a way which is, as the British Minister is quoted in your March 30, 11 a. m., paragraph 8,^{16/} as saying, "not customary among governments".

(4) Joseph E. Jacobs and Ken-Shen Weigh, Chinese Legation Secretary, have reached a tentative accord regarding the 12 articles of the April 8 Chinese draft;^{17/} this subject will be discussed in the next few days with Minister Wu. The text of their accord is in substance the same as the Chinese-British accord which was reported in your March 17, noon, and March 28, 10 a. m., with amendments in your April 19, 2 p. m., and April 19, 4 p. m., though there are a number of changes in wording. It is the Department's hope to be able soon to telegraph to you the tentative texts of these articles, along with tentative texts of other articles on remaining subjects which the Department believes should be a part of the new treaty. The matters which your April 23, 4 p. m., reported will be taken into full account.

(5) Lampson should be informed of the foregoing, and you may, in your discretion and insofar as seems advisable, inform Dr. C. T. Wang.

Stimson

(Pages 809 and 810)

^{14/} See instruction No. 1026, October 29, 1928, to the Minister in China, Foreign Relations, 1928, vol. II, p. 433.

^{15/} Latter not printed; see footnote 74, p. 770.

^{16/} Par. (8) not printed: text based on last two paragraphs of Minister's memorandum of March 30, p. 784.

^{17/} Not printed.

The Secretary of State to the Ambassador in Great Britain (Dawes)[Paraphrase]

Washington, April 25, 1931--4 p. m.

106. (1) The Department today telegraphed to Minister Johnson at Nanking in part as follows:

[Here follows text of paragraphs (1), (3), (4), and (5), of telegram No. 27, April 25, 1931, noon, to Nanking, printed supra.]

(2) The references in the third paragraph quoted above concern reports on the progress of the Sino-British draft. In our negotiations we are trying as far as possible to parallel the Chinese-British accords.

In a telegram of April 20, 11 a. m., from Nanking, Minister Johnson reported that he had been informed by Sir Miles Lampson that the British Foreign Secretary had handed the Chinese Minister in Great Britain an aide-memoire which disclosed the British Government's readiness to concede jurisdiction over criminal cases, and the new American draft is being prepared on the basis of relinquishing criminal jurisdiction.

(3) The British Foreign Office should be informed of the substance of the above.

Stimson

(Page 811)

Memorandum by the Minister in China (Johnson)^{18/}

Nanking, April 27, 1931.

In the course of conversation today with Dr. C. T. Wang, Minister for Foreign Affairs, I referred to a conversation that I had had with Dr. Frank Lee, Vice Minister for Foreign Affairs, on April 23 in the course of which Dr. Lee had intimated that as I had expressed a hope that Great Britain and the United States might sign simultaneously identic agreements in regard to extra-territoriality and as Dr. Wang appeared to be optimistic that an agreement might shortly be reached, I might care to suggest to my Government the advisability of issuing full powers to me to sign. I said that I had telegraphed this suggestion to the Department of State and I had now received a reply to the effect that the Department had been and was still willing to meet the wishes of the Chinese Government in regard to the place where the new treaty should be signed but that in view of the Chinese Government's issuance to Minister Wu of full powers presented in Washington in 1928 and in view of the attitude taken by the Chinese

^{18/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in pars. (2) and (3) of his telegram of April 27, 1931, 4 p. m., infra.

Government and Minister Wu recently when the American Government intimated its desire to transfer negotiations to Nanking, the Department felt that action in issuing full powers to me should be predicated upon a formal request by the Minister for Foreign Affairs in China to the Department of State through Minister Wu.

Dr. Wang stated that he had asked Frank Lee to make the suggestion to me when he had heard that the American Government hoped that it and the British Government would be able to sign identic agreements on the same day. He said that for his part he would have preferred that Dr. Wu sign the agreement as Dr. Wu had worked very hard in the matter. I stated that my preferences followed the same line, that I had no personal ambitions in the matter. Dr. Wang stated that he would telegraph Dr. Wu and keep him completely informed of the progress made in the discussions with the British Minister and that he would tell Dr. Wu that if it was expedient to do so he should make formal request of the Department of State to issue full powers to me.

I informed Dr. Wang that while the Department was continuing to do all that it could to expedite the successful conclusion of the negotiations it felt that although it should be possible soon to reach a complete accord, yet it would be necessary after agreement had been reached on all issues and on the substance of the agreement to give the text careful scrutiny. I said that the Department expected to take such time as might be necessary to scrutinize texts with a view to preventing as far as possible sources of misunderstanding and future friction.

Nelson Trusler Johnson

(Pages 811 and 812)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, April 27, 1931--4 p. m.
[Received April 27--9:30 a. m.]

Department's 27, April 25, noon, to the Consul General at Nanking.

(1) The contents I today communicated to Lampson who remarked that the American stand coincides with his attitude on the reservation of the four port areas and on the 10-year term.

[Here follows report of a conversation with the Minister for Foreign Affairs based on memorandum of April 27, 1931, printed supra.]

(4) Teichman and Hsu Mo have had a further discussion regarding the agreed texts, and I am promised copies soon. Teichman has preliminarily discussed the article on personal status matters and also has discussed the article with reference to the right of residence and trade. He finds the Chinese not willing to agree to open up the country. The Chinese attitude in this regard will, we surmise, be conditional upon the attitude of powers which hold concessions and leased areas.

(5) Lampson and I believe we will find the Chinese in a less negotiable frame of mind following May 5. Lampson has informed his Government accordingly and with this idea in mind intends to press matters here.

Johnson

(Pages 812 and 813)

Memorandum by Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs

Washington, April 27, 1931.

Minister C. C. Wu, accompanied by Mr. Ken-Shen Weigh, Third Secretary of the Chinese Legation, called this morning by appointment. Mr. Hornbeck handed to Minister Wu a new draft in regard to the extraterritorial rights of the United States in China, ^{20/} each page of which was marked "Tentative and Without Commitment" with the explanation that this draft was composed as follows:

(1) The twelve Articles found in the Chinese draft of April 8, 1931, ^{21/} appeared in substantially the same form as revised by Mr. Weigh and Mr. Jacobs, with certain changes made necessary by the giving up of criminal jurisdiction and by a renumbering of the Articles to conform to the tentative draft which is in process of construction at Nanking.

(2) There are eight additional Articles, as follows:

- a. Article V: Arrests, Imprisonment, Detention and Bail;
- b. Article XI: Shipping;
- c. Article XIV: Rights of Residence and Trade;
- d. Article XV: Personal Status Matters;
- e. Article XVII: Definition of Expressions, etc.;
- f. Article XVIII: Excluded Areas;
- g. Article XIX: Provisions of Existing Treaties;
- h. Article XX: Duration and Ratification.

(3) The points to be incorporated in an exchange of Notes are now embodied in one Note in the following order:

^{19/} The substance of this conversation was reported to the Minister in China in telegram No. 28, April 27, 1931, 6 p. m. (793.003/626).

^{20/} Infra.

^{21/} Not printed.

1. Protection of Courts;
2. Personnel of the Special Chambers;
3. Legal Counselors;
4. Lawyers and Interpreters;
5. Arbitration;
6. Rights in Immovable Property;
7. Publication of Codes.

Mr. Hornbeck pointed out that this draft conceded the surrender of criminal jurisdiction but provided for the exclusion of four areas. Mr. Hornbeck further stated that, while it might be possible to reach an accord in regard to the substance of this draft before May 5, he was afraid that it would be impossible to agree upon the final text before that date as it would be necessary to have the Department's Solicitors scrutinize the final text carefully. Minister Wu agreed with Dr. Hornbeck that there should be a careful scrutiny of the final text but remarked that it might be possible to initial a draft for substance.

Minister Wu inquired whether it was our understanding that the Chinese Government would assume jurisdiction over American citizens gradually as the Special Chambers were established and the Legal Counselors were installed or whether this jurisdiction could not be assumed until all of the Special Chambers had been established and Legal Counselors attached thereto. There followed some discussion on this point with the result that it was decided that there was no objection to either plan provided, whichever were adopted, the Treaty should be so worded as to admit of no ambiguity.

With regard to the Article of the draft on the "Rights of Residence and Trade", Minister Wu and Mr. Weigh both remarked that the inclusion of this clause would lay the way open for the colonization of Manchuria by the Japanese.

Minister Wu then inquired how long we intended that the areas named in the draft should be excluded from the scope of the Treaty and was informed that the period of exclusion was intended to be not less than the period of the duration of the Treaty. Minister Wu then remarked that he thought the radius of ten miles would exclude too large an area and might prejudice the long-standing dispute as to the limits of the treaty ports.

Minister Wu then inquired how far our draft paralleled the substance of the Sino-British drafts which had been prepared at Nanking as he desired to save the trouble and expense of telegraphing the whole text. Mr. Jacobs then informed Minister Wu that the twelve Articles which he and Mr. Weigh had discussed and, in addition, Article V and XI were substantially the same as the Sino-British draft, as well as all the subjects dealt with in the exchange of Notes except the one on "Publication of Codes."

Dr. Hornbeck then stated that he would like to have Minister Wu study this draft and that he would be prepared to see him again on Wednesday.

(Pages 813 and 814)

The Department of State to the Chinese Legation^{22/}

(Tentative and without commitment)

Article I: Transfer of Jurisdiction

Except as modified by the provisions of this Treaty, nationals of the United States of America shall in China be entitled to the protection, and shall be subject to the jurisdiction, of the Chinese courts, but they shall, under all circumstances, be amenable only to the jurisdiction of the Chinese Modern Courts of Justice (Fa Yuan) and to the duly promulgated laws, ordinances and regulations of the Central, Provincial and Municipal Governments of China.

In all legal and administrative proceedings from their inception through final appeal and execution and in all matters relating to the administration of justice by the courts, nationals of the United States of America shall enjoy treatment not less favorable than that accorded to nationals of China, and reciprocally, nationals of China shall enjoy in the United States of America similar treatment.

In cases of offenses under the Police Offenses Code or under Municipal Regulations, nationals of the United States of America shall in China be subject to the jurisdiction of the Police Courts, but in such cases the penalty imposed by the court shall not exceed a fine of fifteen dollars, or, in the event of such fine not being paid, detention at the rate of one day's detention for each dollar of the fine imposed up to a maximum of fifteen days.

Article II: Special Chambers

A Special Chamber shall be established in each of the District Courts (Ti Fang Fa Yuan) in Harbin, Shenyang (Mukden), Tientsin, Shanghai, Hankow, Chungking, Canton, Kunming (Yunnanfu), Tsingtao and Foochow and in each of the High Courts (Kao Teng Fa Yuan) or Branch High Courts (Kao Teng Fen Fa Yuan) having appellate jurisdiction respectively over such courts.

All cases involving nationals of the United States of America as defendants or accused shall be tried in China only before the Special Chambers most accessible to the court within whose jurisdiction the cases originate, except, (1) those which may be taken to the Supreme Court of China on final appeal; (2) those in which nationals of the United States of America concerned may elect in writing to submit themselves to the jurisdiction of the nearest Modern Court of Justice (Fa Yuan) to which no Special Chamber is attached; and (3) those which fall within the jurisdiction of the Police Courts of China as provided in Article I of the present Treaty. Similarly, all cases which arise in places where Special Chambers are established involving nationals of the United States of America as plaintiffs or complainants shall be tried before the Special Chambers.

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Text of the Department's revised draft of treaty and notes handed to the Chinese Minister by the Chief of the Division of Far Eastern Affairs on April 2, 1931. This draft, amended as of May 4, was telegraphed in full, except for art. XV, to the Minister in China at Nanking in telegram No. 37, May 8, 1931, 8 p. m. (793.003/676); art. XV was quoted in Department's telegram No. 33, May 4, 1931, 8 p. m., as well as a redraft of this article (see post, p. 837).

Article III: Legal Counselors

The Government of China agrees to take into its service for such period as it may consider necessary, not less than the duration of the present Treaty, a number of Legal Counselors, who shall be selected and appointed as officials of China from among foreign legal experts of high moral character who possess the training, qualifications and practical experience necessary for appointment to judicial office, and who shall be attached to the Special Chambers. Amongst these Legal Counselors, there shall be included one Legal Counselor of Chinese nationality to be similarly selected and appointed from among Chinese legal experts possessing similar training, qualifications and experience.

The names and the amount and conditions of payment of the salaries of the Legal Counselors will be communicated by the Government of China to the Government of the United States. Their terms of service will be governed by contracts and they shall remain in office for specified terms unless dismissed for cause duly shown, and shall otherwise receive the consideration and respect due to the dignity of their office.

A Legal Counselor need not permanently reside at the place in which the Special Chamber of the court to which he is assigned is established and there shall be a flexible and practicable system of administration of assignments in order to ensure efficiency in the use of the services of the Legal Counselors.

The Legal Counselors shall serve under the Minister of Justice and shall be deputed by the Ministry of Justice for service during the hearing of cases involving nationals of the United States of America as defendants or accused in the Special Chambers. It shall be the duty of the Legal Counselors in these cases to observe the workings of the Special Chambers. They shall be given access to the files of the proceedings and may present their views in writing to the judges who shall give due consideration to the views thus expressed by the Legal Counselors. Adequate arrangements shall be made for interpreting in order to enable the Legal Counselors to follow and observe the proceedings in court. The Legal Counselors shall forward to the Minister of Justice such reports as they may consider necessary and copies of these reports shall upon request be immediately furnished by the Legal Counselors to the Minister of the United States of America in China.

In addition, the Legal Counselors shall be authorized to receive directly, from any of the interested parties to an action involving nationals of the United States of America, or from their counsel, observations in regard to the administration of justice, the execution of judgments, or the manner of the application of laws, and, at their discretion, shall bring such observations to the notice of the Minister of Justice with a view to ensuring the observance of Chinese laws. Copies of such observations shall likewise be furnished by the Legal Counselors to the Minister of the United States of America in China upon request.

Similarly the Legal Counselors shall be authorized to receive any other observations or complaints including such as may be caused by domiciliary visits, expropriations, requisitions, arrests, bail, detention, imprisonment, and personal status matters, which observations shall be dealt with in like manner. Immediately following any domiciliary visit, search or arrest directly affecting nationals of the United States of America in any judicial district, the local authorities shall notify the Legal Counselor most accessible in point of time.

When nationals of the United States of America, involved as defendants or accused, are tried before the Special Chambers, a foreign Legal Counselor shall be present at the hearings of the cases in both the High and District Courts, and judgment shall be reserved until he has made, within three days after the conclusion of the trial, such observations as he may desire to the judge or judges in chambers. In the event the judge or judges fail to give these observations due consideration, execution of the judgment will be suspended until the observations of the Legal Counselor shall have been considered by the Ministry of Justice which shall take such action as it deems necessary in the interest of justice.

The Chinese Courts referred to in Article II shall not begin to exercise jurisdiction over nationals of the United States of America until the Special Chambers therein provided for have been organized and the Legal Counselors have been appointed and installed in office as provided in this Article.

Article IV: Lawyers and Interpreters

Nationals of the United States of America appearing before Chinese courts shall be entitled to employ duly qualified counsel of Chinese or American or any other foreign nationality, registered as such with the Chinese Government, and such counsel, if of American or other foreign nationality, shall have the same rights and privileges as Chinese lawyers appearing before the courts, and shall be subject, in all respects, to the same laws and regulations which govern Chinese lawyers. Such nationals shall also be entitled to employ duly qualified interpreters of whatever nationality.

Hearings shall be in the Chinese language but the court shall take measures to ensure an understanding of the proceedings by all parties and have the assistance of competent interpreters if necessary.

Nationals of the United States of America, parties to a suit or persons authorized by them may, upon payment of the usual official fees, obtain certified copies of the evidence and judgment in such suit, and arrangements will, if necessary and where possible, be made for supplying, on application, and on payment of the appropriate fees, translations of such documents.

In all judicial proceedings in which nationals of the United States of America are summoned to appear as parties or witnesses, and in all court processes directly concerning such nationals, their names will, in order to avoid mistake and misunderstanding, be added in English to the Chinese texts of the summonses, orders, or other court processes.

Article V: Arrests, Imprisonment, Detention and Bail

Except in cases of the actual commission of crimes or offenses, nationals of the United States of America shall not be arrested, detained or imprisoned except upon an order formally issued by a Modern Court of Justice specifically stating the legal grounds on which and the offense for which the action is authorized. In all cases of arrest, nationals of the United States of America shall, within twenty-four hours after arrest exclusive of legal holidays, be brought for preliminary hearing and trial before the nearest Modern Court of Justice to which a Special Chamber is attached. If there is no such Modern Court of Justice which can be reached in that space of time, nationals of the United States of America thus arrested shall be brought, with the least possible delay, before the nearest Modern Court of Justice where they shall be allowed to choose, in accordance with the provisions of Article II of the present Treaty, which court shall take jurisdiction.

When nationals of the United States of America, involved as defendants or accused, are tried before the Special Chambers, a foreign Legal Counselor shall be present at the hearings of the cases in both the High and District Courts, and judgment shall be reserved until he has made, within three days after the conclusion of the trial, such observations as he may desire to the judge or judges in chambers. In the event the judge or judges fail to give these observations due consideration, execution of the judgment will be suspended until the observations of the Legal Counselor shall have been considered by the Ministry of Justice which shall take such action as it deems necessary in the interest of justice.

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Nationals of the United States of America under detention or under sentence of imprisonment for a period of one year or less shall only be detained or imprisoned in modern detention houses or modern prisons or in other premises suitable for their detention or imprisonment, while those under sentence of imprisonment for a term of more than one year shall be imprisoned only in the modern prisons situated at places where Special Chambers are established.

Nationals of the United States of America arrested, detained or imprisoned shall be permitted to communicate with the nearest consular officer of the United States of America or to submit observations to the nearest Legal Counselor, and they shall be afforded all possible facilities to that end. Consular officers of the United States of America or their representatives shall be permitted to visit nationals of the United States of America under arrest, detention or imprisonment at all reasonable times.

If any national of the United States of America charged with and found guilty of an offense, the maximum penalty for which does not exceed imprisonment for six months, makes application before sentence is pronounced for the imposition of a fine instead of imprisonment, the court shall grant such application. In such cases the fine imposed shall not exceed a maximum of one thousand dollars. In like manner if any national of the United States of America charged with and found guilty of any offense, the maximum penalty for which does not exceed imprisonment for one year or a fine, makes application before sentence is pronounced for the imposition of a fine instead of imprisonment, the court shall grant such application. In such cases the fine imposed shall not exceed a maximum of three thousand dollars.

Except in cases of crimes punishable by death or imprisonment for life, immediate release on bail shall, on application, be granted to nationals of the United States of America arrested or detained, unless the court has good reason to believe that the accused may flee from justice after release. The amount of bail shall be reasonably proportionate to the offense alleged. Such facilities for release on bail shall be granted to appellants until the sentence of the final Appellate Court is given.

Nationals of the United States of America shall not be subject to imprisonment for debt. If, however, it is shown that a debtor is taking action which will render execution on his goods in China impossible, or if execution cannot be safeguarded by any other means, he may be detained in the manner provided for such cases by Chinese law, in which case the provisions of the third and fourth paragraphs of this Article shall apply.

Except in such cases as must in accordance with Chinese law be heard in camera, all hearings of cases involving nationals of the United States of America shall be open to the public and all persons interested in the hearings may be present as public spectators.

Article VI: Taxation

Nationals of the United States of America shall be liable for the payment of such non-discriminatory Chinese taxation as may be actually paid by all nationals of China who are liable therefor and as may be authorized under legally enacted and duly promulgated laws, ordinances and regulations of the Central, Provincial and Municipal Governments of China.

Nationals of the United States of America shall be protected against all taxation without legal sanction and against irregular or discriminatory methods of assessing or levying taxation, and such legal taxation as is properly payable by nationals of the United States of America shall be enforced against them by no other process than that of action in the competent Chinese Modern Courts of Justice.

Municipal taxation shall be imposed upon nationals of the United States of America only in accordance with duly authorized municipal regulations sanctioned by the Central or Provincial Governments of China. The proceeds of such municipal taxation shall in general only be expended on relevant purposes within the municipal area in question.

No methods of assessing liability to taxation shall be employed except those prescribed by duly promulgated laws, ordinances and regulations of China. In case of disputed assessment, the party concerned shall be entitled to have the amount of his liability determined by the competent Modern Courts of Justice in accordance with Chinese law.

Tax agreements entered into with nationals of the United States of America in their several capacities as companies, firms, partnerships, or corporations will be duly respected.

Article VII: Arbitration

The Chinese Courts of Justice will recognize and, if necessary, secure the performance of agreements wherever entered into by nationals of the United States of America between one another, or with other foreign nationals, or with nationals of China, for the settlement of civil or commercial controversies by arbitration. The arbitrators selected by the parties in accordance with such agreements may be of any nationality.

The arbitration shall be conducted in accordance with the procedure established in the jurisdiction where the arbitrators meet.

The Chinese Courts of Justice will not entertain any application or claim, the subject matter of which falls within the scope of such an agreement for arbitration, but will enforce awards made in pursuance thereof, unless the award is contrary to public order or good morals or is vitiated on other grounds recognized by the general principles of law as understood in modern jurisprudence.

The above provisions shall apply reciprocally to agreements for arbitration entered into by nationals of China and the enforcement of awards made in pursuance thereof by the United States Courts.

Article VIII: Rights in Immovable Property

All rights in immovable property acquired by nationals of the United States of America shall, subject to the exercise of the right of eminent domain by the Chinese Government, be recognized as valid and remain undisturbed.

The property in China of nationals of the United States of America shall not be expropriated except for reasons of public interest recognized by law as such and only after adequate compensation has been paid.

Any dispute regarding the amount of compensation to be paid shall be determined by reference to the competent administrative organ or Modern Court of Justice at the option of the nationals of the United States of America concerned, in accordance with Chinese law. Where such cases are brought before the Modern Courts of Justice to which Special Chambers are attached, the provisions of the Articles of the present Treaty in regard to Special Chambers and Legal Counselors shall apply.

Article IX: Search of Premises

The public buildings and private residences in China of nationals of the United States of America and their warehouses, business premises, factories, together with accessory articles and properties, shall be respected and shall not be subjected to any requisition, search or inspection; and the books and correspondence relating to their commercial transactions shall not be examined except as specifically provided for, in non-discriminatory legislation, legally enacted and duly promulgated. Except where crimes or offenses are actually in the process of being committed, premises occupied by nationals of the United States of America shall only be forcibly entered upon warrants formally issued by Modern Courts of Justice stating the legal grounds on which the action is authorized.

Article X: Military Service and Forced Loans

Nationals of the United States of America in China shall not be subject to any form of military service, or to any tax or levy imposed as substitute for military service, or to military requisitions or contributions of any kind nor shall they be liable or compelled to subscribe, directly or indirectly, to public loans or any other form of forced levy. Reciprocally, nationals of China shall enjoy in the United States of America similar exemptions in respect of all the above matters.

Article XI: Shipping

The commercial vessels of the nationals of the United States of America in Chinese ports or territorial waters or rivers shall comply with such non-discriminatory and legally enacted and duly promulgated Chinese regulations as are applicable to all similar vessels. They shall not be subject to any form of commandeering or requisition, nor shall they be compelled to carry Chinese troops or Chinese military supplies. Such vessels will not be inspected, searched, boarded, or subjected to any kind of restraint by Chinese armed military authority except in the case of special emergency and only after due notification to and by arrangement with the captain of the vessel or the officer in charge. They may not be boarded by Chinese police nor may any person be arrested on board any such vessel except upon a warrant formally issued by a Modern Court of Justice specifically stating the legal grounds on which action is authorized. In the absence of such a warrant, Chinese police may only board the vessel in case of special emergency and only after due notification to and by arrangement with the captain of the vessel or the officer in charge. In general the treatment accorded to the commercial vessels of nationals of the United States of America shall be in conformity with that accorded under recognized international practice by maritime nations to vessels of other countries in their ports or territorial waters. The present authority of the Chinese Maritime Customs with respect to the commercial vessels of nationals of the United States of America, including authority to search such vessels for the prevention of fraud or smuggling, shall remain unimpaired.

Article XII: Companies

Companies, firms, partnerships, corporations or philanthropic institutions incorporated or organized in the United States of America or its territorial possessions in accordance with applicable laws and operating in China shall, provided they comply with Chinese laws relating to registration, be entitled to all the rights and privileges enjoyed by nationals of the United States of America under the present Treaty. Such companies, firms, partnerships, corporations or philanthropic institutions and their branches, agencies or representatives shall not be subject to discriminatory treatment, and, as regards national, provincial and municipal taxation, shall only be taxed in proportion to the amount of capital actually employed respectively in China, in the province, or in the municipality, or in respect of profits and revenues which they have actually earned respectively in China, in the province, or in the municipality.

Reciprocally companies, firms, partnerships, corporations or philanthropic institutions incorporated or organized in China in accordance with applicable laws and operating in the United States of America shall enjoy as regards taxation, the right to carry on business and access to the courts, treatment not less favorable than that enjoyed by companies, firms, partnerships, corporations or philanthropic institutions of the most-favored foreign country.

Article XIII: Pending Cases

Cases which have been terminated in the courts of the United States of America in China prior to the coming into force of the present Treaty shall not be reopened and judgments or decisions rendered in such cases shall, if necessary, be executed in any part of China by the Chinese judicial authorities.

Cases pending before the courts of the United States of America in China at the time of the coming into force of the present Treaty shall continue until judgment is pronounced in said courts, the jurisdiction of which shall remain in full force, and the Chinese authorities shall lend any assistance requested by the authorities of the United States of America in this connection. Such cases shall be disposed of and wound up within a period of six months, upon the expiration of which period, all cases still pending shall either be dismissed or turned over for adjudication to the Chinese courts which would otherwise have jurisdiction under the provisions of the present Treaty.

It is understood that after the coming into force of the present Treaty, no action against nationals of the United States of America shall be entertained by the competent Chinese courts in respect of acts which took place prior to that date, for which they were not liable according to the laws of the United States of America, but for which they might be liable according to laws of China.

Article XIV: Rights of Residence and Trade

In those areas in which the United States of America shall have completely surrendered extraterritorial jurisdiction over its nationals in China, the nationals of the United States of America, if they do not already possess such rights under existing treaties, shall be entitled to reside, travel, trade and own property.

Article XV: Personal Status Matters

In matters of personal status the laws of the United States of America shall be applied by the Modern Courts of Justice as regards nationals of the United States of America in China unless the Chinese laws in regard to such matters are substantially the same as the laws of the United States of America or of the countries of Western Europe, in which case the Modern Courts of Justice shall apply Chinese law. In deciding whether Chinese or American laws are applicable in this connection, the Modern Courts of Justice shall consider briefs to be filed with the Courts by the lawyers for the interested parties and by the legal Counselors provided for in Article III of the present Treaty.

When nationals of the United States of America die in China, the local administrative authorities shall at once inform the nearest consular representative of the United States of America, provided, however, that if the latter receives the information of death first, he shall notify the local Chinese authorities accordingly.

In all cases where the consular officers of the United States of America deem such action necessary, they shall be entitled, upon receipt of notice of the deaths of nationals of the United States of America, to take possession of or take steps otherwise to protect and preserve the property of such deceased Americans pending the arrival of a duly authorized representative of the estate or the appointment by the competent court of an administrator. In the exercise of this duty, consular officers of the United States of America shall be given every assistance by the Chinese authorities if such assistance is requested.

The personal effects and objects of value left behind by nationals of the United States of America who die on the high seas, or when passing through China without having there any regular domicile or permanent residence, shall be handed over to or be taken possession of by the nearest consular representative of the United States of America, who shall be entitled and obligated to dispose of the same in accordance with the laws of the United States of America without any interference by the Chinese authorities.

Article XVI: Non-Discriminatory Treatment

In all matters for which provision is made in the present Treaty, nationals of the United States of America shall be accorded in China treatment in no way discriminatory as compared with the treatment accorded to the nationals of any other Power or Powers in China, and any exemptions from Chinese jurisdiction which may be accorded by China to the nationals of any other Power or Powers shall likewise be accorded to nationals of the United States of America.

Article XVII: Definition of the Expressions--"Nationals of the United States of America" and "Nationals of China"

The expression "nationals of the United States of America" used in the present Treaty shall be deemed to include both citizens of the United States of America and citizens of its territorial possessions; and likewise the expression "nationals of China" shall be deemed to include both citizens of China and citizens of its territorial possessions.

Article XVIII: Excluded Areas

The provisions of the present Treaty shall not be applicable within a radius of ten miles from the present Custom Houses in the treaty ports of Shanghai, Tientsin, Hankow and Canton.

Article XIX: Provisions of Existing Treaties

Except as superseded or modified by the provisions of the present Treaty, the provisions of existing treaties between the United States of America and China shall remain in force.

Article XX: Duration and Ratification

The present Treaty shall come into force upon the date of the exchange of ratifications and shall thereupon be mutually binding over a period of ten years, at the end of which period the agreement may, in response to the demand of either party made six months prior to the expiration of the period, be revised by negotiation between the parties hereto. Should neither party demand such revision, the Treaty shall continue in force for an additional period of five years, at the expiration of which term and likewise at the expiration of each successive term of five years, the same provision for revision shall apply.

The present Treaty has been drawn up in the English and Chinese languages; but, in the event of there being any differences of interpretation, the sense as expressed in the English text shall prevail.

In faith, whereof, the above-named Plenipotentiaries have signed the present Treaty and affixed, thereto, their seals.

Done at, the day of 1931.

Sir: With reference to the Treaty which we have signed today in regard to the extraterritorial rights of the United States of America in China, I have the honor to request confirmation of our mutual understanding on the following points:

1. Protection of the Courts: The Chinese courts shall insure to the persons and property of the nationals of the United States of America due protection in accordance with international law and the general practice of nations.

2. Personnel of the Special Chambers: The President of the court to which a Special Chamber is attached shall be concurrently the chief judge of that Special Chamber and the other judges of the Special Chamber, as well as the procurators, shall be legal scholars with a broad knowledge of the general concepts of modern jurisprudence and with practical experience, and their names, ranks, and salaries, shall be made known to the public, and they shall not be removed from office without cause.

3. Legal Counselors: The Legal Counselors shall be engaged and employed by the Chinese Government under contracts specifying in detail the duration and the terms of their service, including in the case of each foreign Legal Counselor total emoluments of not less than (blank) dollars compensation, United States currency, to be paid in quarterly installments, the said quarterly installments to be deposited in such bank or banks as the Legal Counselor concerned may indicate six months ahead of the time when such installments fall due. Among the corps of Legal Counselors selected by the Government of China, there shall be included Legal Counselors of American nationality, and, as far as practicable, a Legal Counselor of American nationality will officiate at the trial of cases involving nationals of the United States of America.

4. Lawyers and Interpreters: Duly qualified American lawyers appearing on behalf of nationals of the United States of America in the Chinese courts shall not be required to have a knowledge of the Chinese language or possess diplomas of Chinese law schools.

5. Arbitration: The Chinese Arbitration Law of January 20, 1930, shall have no application to arbitration agreements of the kind contemplated in Article V of the Treaty.

6. Rights in Immovable Property: All legal Chinese land transfer fees leviable under regular Chinese legislation shall be paid by nationals of the United States of America on account of land transactions effected after the date of the signature of the present Treaty; but no demand will be made by the Chinese authorities for the payment of such transfer fees on the transfer of land to or from nationals of the United States of America prior to the date of the signature of the present Treaty, and rights in immovable property held by nationals of the United States of America shall not be called in question on account of non-payment of such transfer fees in the past. Rights in immovable property in China now held by nationals of the United States of America shall not be questioned unless they are invalidated on legal grounds as a result of a decision rendered by a Modern Court of Justice, but nationals of the United States of America shall comply with the laws of China in regard to such property. In reaching their decision in such cases, the Chinese courts shall take into consideration the treaty provisions, and the laws, customs, and practices in various parts of China which existed at the time when such property rights were acquired. Existing rights of nationals of the United States of America to acquire, hold, and freely dispose and transfer their rights in immovable property in accordance with Chinese laws shall remain unimpaired.

7. Publication of Codes: With a view to enabling nationals of the United States of America to familiarize themselves with Chinese laws and judicial procedure, the Chinese Government agrees to prepare, publish and place on sale, an edition or editions of all Chinese codes and other important laws of China duly promulgated and enforced, together with authorized translations thereof, copies of which shall be communicated to the Government of the United States of America, and future laws shall be similarly published and communicated.

I have the honor to be, etc.

Sir: I have the honor to acknowledge the receipt of your Note referring to the Treaty which we have signed today in regard to the extra-territorial rights of the United States of America in China, in which you request confirmation of our mutual understanding on the following points:

(Seven points to be quoted in full.)

In reply, I have the honor to confirm our mutual understanding of the points as quoted above.

I have the honor to be, etc.

(Pages 815-827)

Memorandum by the Minister in China (Johnson)^{23/}

Nanking, April 28, 1931.

British Minister came to see me this morning and I told him of my conversation with the Minister for Foreign Affairs yesterday. I told him that apparently Minister for Foreign Affairs was permitting it to leak out that he was hoping for the signature of treaties within next few days as Chinese correspondent for Chicago Daily Tribune had called upon me this morning to inquire whether I was going to sign within the next few days. British Minister stated that apparently Chinese were working on the theory that we wished to sign before convening of Conference, whereas we were really working on the theory that the Chinese wished to get something before the Conference. He said that yesterday afternoon at three o'clock he had gone to see Dr. Wang and that in the course of a conversation which concerned itself with a number of matters he inquired of Dr. Wang whether he had anything to offer in regard to the main principles under discussion. Dr. Wang replied that he had been waiting to hear what the British Minister might have to offer. Sir Miles pointed out that Dr. Wang was evidently mistaken as Mr. Henderson,^{24/} when he had last seen the Chinese Minister in London had indicated British terms in no uncertain manner and had asked Sze to ask Dr. Wang to put a definite proposition before Sir Miles Lampson in

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Copy transmitted to the Department by the Minister without covering despatch received June 11. Substance reported by the Minister in his telegram of April 28, 1931, 3 p. m., from Nanking; received April 28, 12:25 p. m. (793.003/629)

^{24/}

Arthur Henderson, British Secretary of State for Foreign Affairs.

Nanking for reference to his Government. Dr. Wang then stated that he would name his final terms, namely, that the International Settlement at Shanghai could be reserved from the scope of the agreement for a period not greater than three years. Dr. Wang said that he realized that it would take probably six months to ratify and put into effect the new treaty and that inasmuch as the old treaties had but a matter of three years yet to run he was really giving the British the benefit of a year. Sir Miles stated that this of course was not good enough. The Minister for Foreign Affairs was adamant; he said that unless an agreement could be reached the Government would have to take unilateral action and would have to direct forceful action against the concessions. Sir Miles stated that he told Dr. Wang that he did not understand the meaning of his term forceful action; these were not the words customarily used in diplomacy. Dr. Wang said that he was not using them as directed to Sir Miles. Sir Miles stated that he could not take them in any other sense and that he thought China would rue the day when such steps were begun. He wished to remind Dr. Wang that in 1927 the British Government had made a very sincere offer to the Chinese Government in regard to British concessions,²⁵ an offer which the Chinese Government had not deigned to consider and that he thought it strange that at this time the Chinese Government should talk of forceful action. British Minister informed me that Dr. Wang seemed somewhat taken aback and repeated that he was not intending British Concessions, but that his statement had reference to others.

Sir Miles stated that Dr. Wang requested him to obtain an answer in regard to his terms by Wednesday the 29th on which day he was to report to the Political Council.

Sir Miles stated that the conversation having returned to other matters Dr. Wang referred to the various legal terms mentioned in the article concerning personal status, saying that it was going to be very difficult to translate these terms into Chinese. Sir Miles stated that he saw no necessity for a translation as the negotiations had been conducted entirely in English which was thoroughly understood and he thought that no translation was necessary. Dr. Wang demurred to this indicating that Chinese should be the authoritative text. Sir Miles stated that his Government would ask for a third text as authoritative which would doubtless be French and that the translation would be a long and tedious process requiring confirmation in Paris. He said that Dr. Wang seemed somewhat disturbed by this. Dr. Wang asked him if he was prepared to sign and Sir Miles informed him that the best he had contemplated was to initial agreed texts against subsequent confirmation and examination and in any case he must warn Dr. Wang that the whole treaty would have to be referred to the Dominions.

With reference to the question of residence in the interior the British wanted terms similar to the Czech treaty.²⁶ Sir Miles stated that the Chinese objected on the ground that the Czech and Polish terms²⁷ involved nationals of countries with whom China had relations on the basis of complete equality. China could not open the country to the nationals of countries which still retained concessions and reserved areas.

Nelson Trusler Johnson

(Pages 827-829)

²⁵/ See point 5 of British offer quoted by the British Ambassador in his note No. 41, January 19, 1927, Foreign Relations, 1927, vol. II, p. 344.

²⁶/ Treaty of amity and commerce, signed at Nanking, February 12, 1930, League of Nations Treaty Series, vol. CX, p. 285

²⁷/ For treaty of friendship, commerce and navigation, signed at Nanking, September 18, 1929, and additional protocol of July 1, 1930, see ibid., vol. CXX, pp. 331 and 343.

The Minister in China (Johnson) to the Secretary of State

Nanking, April 28, 1931--noon.
Received April 29--11:20 a. m. ^{28/}

My April 23, 4 p. m.

1. British Minister informs me that his present position regarding negotiations is as follows:

Articles 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 13 and the articles concerning nondiscriminatory treatment, British protected persons, the three declarations, the exchange of notes and the letter regarding arbitration law have been agreed upon.

2. Article 8 now reads:

"(1) All rights in immovable property held by British subjects in China shall be recognized as valid and shall remain undisturbed subject to the exercise of the right of eminent domain by the Chinese Government.

(2) The property whether movable or immovable of British subjects in China shall not be expropriated or requisitioned except for reasons of interest recognized by the law as such and only after adequate compensation has been paid.

(3) Any dispute regarding the amount of compensation to be paid shall be determined by reference to the competent administrative organ or the competent modern court of justice at the option of the British subject concerned in accordance with Chinese law. Where such cases are brought before the modern courts of justice the provisions of article No. 2 (Special Chambers) and article 3 (legal counselors) of the present treaty covering the hearings of cases in which British subjects are involved as defendants will apply."

3. In article 9, immunity of premises, see the paragraph No. 11 of my March 17, noon, the word "requisition" has been changed to "occupation".

4. British Minister has not yet heard from London about article 5, see paragraph No. 3 of my April 19, 4 p. m.

5. Article 11, see paragraph No. 4 of my April 19, 4 p. m., has been agreed to.

6. The reciprocity clause has been deleted from article 10, military requisitions and forced loans, and may be incorporated in the agreed minute the text of which, covering matters such as immunity of court from external interference, lawyers, et cetera, is still before British Foreign Office.

7. Reciprocity clause has been dropped from article 7, arbitration.

8. As regards personal status the following draft which is understood to be acceptable to Dr. Wang has been referred to the British Foreign Office:

^{28/}
 Telegram in two sections.

"(1) In all matters of personal status, among which are included all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction, and in all matters relating to succession to personalty whether by will or on intestacy, and to the distribution and winding up of estates and family law in general, English law will be applied by the Chinese courts as regards British subjects in China.

(2) All such cases of personal status where only British subjects are concerned will at the option of the parties concerned be dealt with outside the jurisdiction of the Chinese courts.

(3) British consular officers shall take possession of and administer the estates of British subjects dying in China in all cases where no objection to such administration has been filed by an interested party in writing at a British consular office in China within 90 days' notice of death announced by the competent consular office. In case of intestacy where there is no heir the immovable property of the deceased will be disposed of in accordance with the laws of China.

(4) In all the above-mentioned matters the principles of private international law will be likewise applied by the British courts as regards Chinese citizens in Great Britain without any discrimination against them as compared with the nationals of any other country."

9. As regards publication and communication and translation of codes, British and Chinese are at present deadlocked.

10. As regards rights of residence British Minister has referred to his Foreign Office the following text offered by Dr. Wang:

"British subjects shall, subject to Chinese laws and regulations, enjoy in China the right to travel, reside, establish firms, open branches, transact business, acquire or lease property, work and engage in industry or commerce, in all the localities where the nationals of any other country shall be permitted to do so, and in the same manner as the nationals of any other country, provided that where any rights in the same matters are granted to the nationals of any other country only upon the fulfillment of certain conditions, such conditions must also be fulfilled before British subjects are allowed to enjoy the same rights. It is understood that the existing rights of British subjects in respect of the above matter will remain unimpaired."

11. There remain outstanding to be discussed the following articles: Continuance of existing treaties except as modified; authoritative text (probably French); duration and ratification; excluded areas.

Johnson

(Pages 829-831)

Memorandum by Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs of a Conversation Between the Chinese Minister (C. C. Wu) and the Chief of the Division (Hornbeck)

[Washington,] April 29, 1931.

The Chinese Minister, Mr. Wu, called about noon today and stated that he had been instructed to inform the Department that Dr. Wang, the Chinese Minister for Foreign Affairs, had stated to the British Minister that he may be able to submit to the Political Council a proposal for the exclusion of Shanghai within the International Settlement area from the scope of the new treaty for a period of three years but that this is the only concession that he could make in regard to excluded areas, and that he, Wu, is now instructed to inform the Department of this and to the same effect. Minister Wu's statement was received without comment.

Minister Wu also stated that he had been instructed to communicate the Chinese proposal in regard to the rights of residence and trade and that he would send Mr. Weigh of the Chinese Legation to the Department that afternoon to give us the text of the Chinese proposal.

Mr. Weigh called that afternoon and handed to Mr. Jacobs this text which reads as follows:

[Here follows text printed infra.]

(Page 831)

The Chinese Legation to the Department of State

Tentative and without commitment

Article XIV. Rights of Residence and Trade

Nationals of the United States of America shall enjoy in China the right, subject to Chinese laws and regulations, to travel, reside, establish firms, open branches, acquire or lease properties, work and engage in industries or commerce, in all the localities where the nationals of any other country shall be permitted to do so and in the same manner and under the same conditions as the nationals of any other country, provided that where any rights in these matters are granted to the nationals of any other country only upon the fulfilment of certain conditions, such conditions must also be fulfilled before nationals of the United States of America are allowed to enjoy the same rights. It is understood that the existing rights of nationals of the United States of America in respect of the above matters will remain unchanged.

(Page 832)

29/

Handed to Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs by the Third Secretary of the Chinese Legation on April 29, 1931.

✓ ✓
The Secretary of State to the Ambassador in Great Britain (Dawes)

[Paraphrase]

Washington, April 30, 1931--5 p. m.

110. Department's 106, April 25, 4 p. m.

(1) [Here follows substance of conversation between the Chinese Minister and the Chief of the Division of Far Eastern Affairs reported in first paragraph of memorandum of April 29, 1931, printed on page 831.]

(2) In the telegram cited above and in previous telegrams, the Department's views regarding excluded areas were communicated to you. The British Ambassador here has been informed by the Department of the above.^{30/}

(3) The Department hopes to be informed as to the position the British Foreign Office will take in view of C. T. Wang's statement to Lampson and of the communication on April 29 by C. C. Wu to us, mentioned in paragraph (1). It is the Department's opinion that the British and American Governments should firmly refuse to be moved thereby from the position they have taken that a reasonable Shanghai area must be excluded and from the contention that similar Tientsin, Hankow, and Canton areas also should be excluded. It is the Department's opinion that a contention which Dr. Wang advanced that in any event our rights terminate 3 years hence with expiration of the treaties is unsound and, with reference particularly to the problem of the excluded areas, irrelevant. The Department notes with interest that the Japanese Government does not appear to be disconcerted by the Chinese declaration that Japan's extraterritorial rights no longer exist and also that the French Government has not indicated any weakening under the pressure of Dr. Wang's tactics.

(4) The Department wishes you to discuss the situation with the British Foreign Office and to report upon the views and, so far as is possible, the intention of the British Government.

Stimson

(Pages 832 and 833)

^{30/} Pars. (1) and (2) were reported to the Consul General at Nanking, for the Minister in China, in telegram No. 30, April 30, 1931, 3 p. m. (793.002/629)

Memorandum by the Minister in China (Johnson)^{31/}

Nanking, May 1, 1931.

I called on British Minister this afternoon and he informed me that he had seen Dr. C. T. Wang and had read to him selected portion from the instructions which he had received from his Government with reference to Dr. Wang's final offer of April 27th. These instructions were to the effect that Dr. Wang's offer was by no means acceptable. British Government felt that the four areas should be excluded and that because of the complicated nature of the questions involved it was the opinion and the suggestion of the British Government that a very desirable way to deal with them would be to have commissions composed of responsible Chinese and British subjects which could investigate all of the questions involved and make proposals for a settlement. British Minister read to Dr. Wang the last paragraph of his instructions which were substantially to the effect that British Government hoped that Chinese Government would not take any precipitate action in this question which had been the subject of negotiations. British Government warned Dr. Wang that such action on Chinese part might very well result in turning what had been consultations on the part of the British Government with other governments to persuade them to take a more conciliatory attitude toward Chinese aspirations to consultations directed toward a common resistance to Chinese attitude. British Minister informed me that Dr. Wang was apparently very much taken aback by British Minister's communication. He said he could not go beyond what he had offered and refused even to go to higher authorities with any other proposition. British Minister pressed him not to look upon present situation as closing door to further discussion.

British Minister tells me that he informed his Government of Chinese attitude. He said that he did not know just where matters stood now but that he proposed to have Mr. Teichman make an appointment with Hsu Mo for the purpose of further discussion.

We went on to discuss the present situation and agreed that it would probably push the question of extraterritoriality into the background as a matter of importance at the coming conference. We also agreed that there was little chance of trouble here.

Nelson Trusler Johnson

(Pages 833 and 834)

^{31/} Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in telegram of May 2, 1931, noon, from Nanking; received May 2, 4:55 p. m. (793.002/655)

Memorandum in Reply to the Secretary of State

[Paraphrase]

London, May 1, 1931--6 p. m.
[Received May 1--4:09 p. m.]

127. Your 11C, April 30, 5 p. m., has been discussed with the Foreign Office where I was informed that copies of the latest telegraphic instructions to Lampson as to this question are being telegraphed to the British Ambassador, who is to convey a summary of their contents to you.^{22/}

I understand, briefly, that the British Government state that they are unable to consent to fixing a time limit to surrender jurisdiction in the Shanghai International Settlement and that Lampson has been instructed further, concerning the general subject of the reserved areas, to point out to the Chinese Foreign Minister the impossibility of discussing the matter until Chinese negotiations with other powers reach such a stage as to permit these other powers also to be brought into the discussions.

I am confidentially told that the present instructions to Lampson permit him, as a last resort, to yield in regard to Hankow.

Dawson

(Page 834)

Memorandum by the American Counselor of Legation in China (Park)
of a Conversation Between the American Minister in China
(Johnson) and the French Minister in China (Wilden).^{23/}

[Extract]

Nanking, May 3, 1931.

Mr. Wilden asked Mr. Johnson what effect, in his opinion, the present state of affairs would have on the negotiations in regard to the abolition of extraterritorial jurisdiction. Mr. Johnson pointed out that President Wang Chung-hui was the principal negotiator on the Chinese side and that his absence could not but hamper the negotiations. He expressed the opinion that the Chinese authorities, and the National People's Convention, would be engrossed with political issues, to the exclusion of treaty negotiation. Mr. Wilden appeared to derive some comfort from this. He asked Mr. Johnson whether the British were going to sign a treaty in a day

^{22/} The British Charge communicated this summary, with a covering note (neither dated), to the Secretary of State on May 2, 1931 (792.002/553).

^{23/} Copy transmitted to the Department by the Counselor of Legation in his despatch No. 1006, May 26; received June 22.

or two. Mr. Johnson, without assuming to know anything positive about this, said he thought that only by some miracle would the British actually sign a treaty with the Chinese in the immediate future. Mr. Wilden then asked what stage had been reached in the American negotiations. Mr. Johnson said there was no prospect of an early conclusion to the negotiations and in view of Mr. Wilden's evident indecision as to what France ought to do, Mr. Johnson said he would tell Mr. Wilden in advance before he, Mr. Johnson, signed a treaty. (Evidently Mr. Wilden took this promise to include preliminary notice of a proposed signing of a treaty in Washington, as well. W. R. P.) Mr. Wilden appeared greatly pleased and relieved by this assurance of Mr. Johnson.

(Page 835)

Memorandum by the Chief of the Division of Far Eastern Affairs
(Hornbeck)

[Washington,] May 4, 1931.

The Chinese Minister called at noon today by appointment made at his request.^{34/}

The Minister stated that the question of excluded areas presented three problems, namely:

1. The number of areas to be excluded;
2. The extent of the areas to be excluded;
3. The term of duration of the treaty.

In regard to the number and the extent of the excluded areas, Dr. Wu indicated that his Government thought that the number should be less and the areas less than proposed in the Department's latest draft. With regard to the term of duration of the treaty, he said that his Government proposes three years.

There was a lengthy discussion, in conclusion of which Mr. Hornbeck, in reply to express questions by the Minister, said that we feel that the exclusion of four areas is logical and reasonable; that discussion of any possible reduction of that number should be held at Peking rather than here; that, with regard to areas, we would be willing to listen to any suggestions for a more logical delimitation than that of the ten mile radius; and that, with regard to the period of duration of the treaty, we would not like to discuss a period of less than ten years.

Dr. Wu also stated that the British negotiators had proposed an international commission to study and make recommendations with regard to excluded areas. He was informed that we assume that study will have to be made, though we are not prepared to say by what means or method, and that the

^{34/}

Joseph E. Jacobs of the Division of Far Eastern Affairs was also present.

necessity for dealing with these areas by some special method is, in our opinion, one of the strong arguments in favor of excluding them from the operation of the present agreement.

It was inferred from Dr. Wu's manner that either (1) he is optimistic that a treaty can be concluded along the lines of our position. Dr. Wu intimated that he assumed that further time would be given for negotiation and Mr. Jacobs and Mr. Hornbeck inferred that Dr. Wu thinks that Nanking will not denounce the treaties unilaterally on May 5.

(Pages 835 and 836)

The Minister in China (Johnson) to the Secretary of State

Nanking, May 4, 1931--2 p. m.
[Received May 4--3:50 a. m.]

British Minister informs me that in discussions regarding personal status matters he is having trouble getting Chinese to accept certain amendments suggested by British Foreign Office. Chinese say proposals put forward by us are much easier for them to accept. Please telegraph text of our article on this subject that I may show it to British Minister.

Johnson

(Page 836)

Memorandum by the Minister in China (Johnson)^{32/}

Nanking, May 4, 1931.

I called on Sir Miles Lampson, British Minister, this afternoon and he told me that he had seen Dr. C. T. Wang this morning, and had found the latter in a very conciliatory mood. They discussed the question of reserved areas and Dr. Wang permitted the British Minister to infer that he might be able to persuade his Government to concede the entire area of the municipality of Greater Shanghai as being excluded from the treaty provided that the British would agree to some solution of the extra-settlement road question. Sir Miles told him that the British Government was prepared to meet the Chinese Government on the question of the extra-settlement roads but that Dr. Wang's offer was inadequate, in fact, he, Sir Miles, had been precluded by recent instructions from even so much as discussing the four original areas.

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Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in his telegram of May 4, 1931, 5 p. m.; received May 4, 6:30 p. m. (793.003/657)

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Dr. Wang told the British Minister that either today or tomorrow the Chinese Government would publish regulations governing jurisdiction over foreigners when extraterritoriality was abolished and that these regulations would be implemented by a mandate specifying the date on which they would come into effect. British Minister stated that he had heard that the date was to be October 1st but Dr. Wang stated that ample time would be given for successful negotiation of extraterritorial questions.

Sir Miles informed Dr. Wang that Dr. Wang's final terms amounting practically to an ultimatum had had their effect upon the British Government and he read once more to him the final paragraph of his instructions in which the British Government warned Dr. Wang lest his attitude cause British Government's consultations with other powers intended to lead to agreement with China to change to consultations with a view to a concerted resistance against China's demands.

Nelson Trusler Johnson

(Page 837)

The Secretary of State to the Consul General at Nanking (Peck)

Washington, May 4, 1931--8 p. m.

33. For the Minister: Your May 4, 2 p. m., from Nanking.

1. The text of this article as it appeared in the Department's draft of April 27 was as follows:

[Here follows text of article XV of draft printed on page 823.]

2. In a discussion on May 2 between Mr. Weigh, of the Chinese Legation, and Mr. Jacobs, Weigh expressed a preference for the Sino-British draft of the article. As a result, the following redraft of this article was, on May 2, made for substitution:

"In all matters of personal status, among which are included all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction, and in all matters relating to succession to personalty whether by will or on intestacy, and through the distribution and winding up of estates and family law in general, the applicable laws of the United States of America shall be applied by the Chinese courts as regards nationals of the United States of America in China.

All such cases of personal status where only nationals of the United States of America are concerned shall, at the option of the parties concerned, be dealt with outside the jurisdiction of the Chinese courts.

Consular officers of the United States of America shall take possession of and administer the estates of nationals of the United States of America dying in China in all cases where no objection to such administration has been filed by an interested party in writing at a consular office of the United States of America in China within 90 days' notice of death announced by the competent consular office. In case of intestacy where there is no heir the immovable property of the deceased will be disposed of in accordance with the laws of China.

The personal effects left behind by nationals of the United States of America who die on the high seas, or when passing through China without having there any regular domicile or permanent residence, shall be handed over to or be taken possession of by the nearest consular representative of the United States of America, who shall be entitled to dispose of the same in accordance with the laws of the United States of America without any interference by the Chinese authorities."

3. As both the British and American drafts in regard to the question of personal status matters are still tentative and without commitment, it may be possible for you to prepare a revision, using materials in both texts, which will be acceptable to British and to Chinese and to us. Keep in mind that we cannot grant reciprocity. Please report developments.

Stimson

(Pages 837 and 838)

The Minister in China (Johnson) to the Secretary of State

Nanking, May 5, 1931--3 p. m.
[Received May 5--2:55 p. m.]

1. My May 4, 5 p. m.^{36/} People's Conference met this morning. General Ho Ying-chin was present. Apparently he was only other important member there outside of Chiang Kai-shek and Chang Hsuenliang.

2. Government mandate issued yesterday accompanied by regulations puts regulations into effect on 1st day of 1st month of 21st year of the Republic, that is January 1st, 1932.

3. Statement by C. T. Wang referring to manifesto and reviewing negotiations says "The National Government appreciates the very warm sympathy already shown by these powers especially Great Britain in the endeavor to consummate China's legitimate aspirations". Reference to Great Britain has significance as I understand C. T. Wang is reported to have said to Chinese newspaper correspondent that he made no reference to the United States because British Government was prepared to be conciliatory but was held back by recalcitrant attitude of the United States.

^{36/}
Not printed; see footnote 35. p. 837.

4. It is reported here that C. C. Wu is in active sympathy with Kwangtung faction.

5. Sun Fo has not returned to Nanking.

Johnson

(Pages 838 and 839)

Memorandum by the Minister in China (Johnson)^{37/}

Nanking, May 6, 1931.

I went to see Dr. C. T. Wang, Minister for Foreign Affairs, at ten o'clock this morning at his request at his house. He told me that he had a matter of considerable delicacy to communicate to me; that it involved a piece of information which, if true, was likely to affect adversely the friendly relations between the two countries. He said that from a source which he considered to be unimpeachable he had been informed that the American Government had attempted to persuade the British Government not to go so fast in the matter of meeting Chinese desires in negotiations on extraterritoriality. He said that this action had been taken either in Washington or in London and I inferred that his informant was either the Chinese Minister in London or the Chinese Minister at Washington. He said that he did not desire that this matter become the subject of any publicity. I said that only yesterday I had heard from a newspaper correspondent that he had stated to a newspaperman that he understood the United States was attempting to block British negotiations. Dr. Wang then said that he had as a matter of fact brought this information to the attention of the President and to the Political Council, although he had added in making his report that he could not understand such action if it had taken place because of the friendly attitude manifested during the negotiations in Washington. I told Dr. Wang that I was at a loss to account for the report which he had received; that while he of course knew that the British and American Governments were in consultation in regard to the negotiations I had had no intimation that the American Government had attempted to interfere with the progress of these negotiations insofar as the other governments were concerned. I asked him whether he desired that I communicate this information to my Government. He said that he did so desire and asked that I get it confirmed if possible. Dr. Wang stated that his informant had told him that I knew nothing of this. He intimated that he believed that this action had been taken by the Secretary of State personally.

Nelson Trusler Johnson

(Pages 839 and 840)

^{37/} Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in pars. 1 and 2 of his telegram of May 6, 1931, noon; received May 6, 9:30 a. m. (793.003/660)

Memorandum by the American Minister in China (Johnson) of a
Conversation With the Chinese Minister for Foreign
Affairs (C. T. Wang)

Nanking, May 6, 1931.

In the course of conversation this morning Dr. Wang informed me that he had received a communication from Dr. C. C. Wu in Washington to the effect that as regards negotiations there were three points which remained to be settled. These points were (a) the United States was insisting on the exclusion of four areas; (b) the United States was asking for a ten mile limit in connection with each of these areas; (c) the United States was insisting upon a term of ten years. He stated that in regard to (b) and (c) Dr. Wu had informed him that the Department of State was prepared to accept any limit to these areas arranged with him by British Minister and myself and that in regard to the term the Department of State would accept any term between five and ten years that might be agreed to here. Dr. Wang stated that he had instructed Wu that on point (a) Chinese would never agree to four areas; that in regard to point (b) he thought it probable that he could persuade his Government to accept the exclusion of the area of Greater Shanghai, provided that it was agreed that the extra Settlement roads were brought under the control of the Chinese Government as regards taxation, police and maintenance. He said that the Chinese attitude on the subject of a greater area at Shanghai was dictated by a fear that they might find themselves confronted by an agreement to the extension of the International Settlement. He said that he appreciated that there was objection to limiting the excluded area to the actual boundaries of the International Settlement due to the large number of foreigners living outside those boundaries and yet having daily occasion to visit the Settlement. The area of the municipality of Greater Shanghai should be sufficient to cover all the requirements. In regard to point (c) the Chinese Government must insist on a term of not more than three years. He said that his strongest point in persuading his Government to accept a proposal for the exclusion of Shanghai was the argument that the last treaty would expire in 1934. I understood him to use the term three years in connection with the exclusion of Shanghai and not in connection with the term of the treaty itself, but I did not discuss this matter with him as I did not know where it might lead.

Nelson Trusler Johnson

(Pages 840 and 841)

38/

Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in par. 3 of his telegram of May 6, 1931, noon; received May 6, 12:55 p. m. (793.003/660)

Memorandum by the Minister in China (Johnson)^{39/}

Nanking, May 6, 1931.

I called upon Sir Miles Lampson, the British Minister, this evening and told him of the statement which Dr. C. T. Wang had made to me this morning regarding an attempt by the United States Government to dissuade the British Government from going too fast in meeting Chinese wishes in the matter of extraterritorial negotiations. Sir Miles stated that he was at a loss to understand the motive behind Dr. Wang's statement. He said that when he saw Dr. Wang on May 1st and communicated to him British Government's answer to Dr. Wang's final offer of April 27th he had stated under instructions from his Government that other powers and even the United States felt that British Government was proceeding too fast in the negotiations. He said that of course Dr. Wang might possibly have used his statement. I told the British Minister that while this was possible the whole trend of Dr. Wang's statement to me had been couched in such terms as to lead me to infer that he had received his information from an informant in London or Washington. I said that I had communicated Dr. Wang's message to my Government.

(Page 841)

Nelson Trusler Johnson

The Minister in China (Johnson) to the Secretary of State

Nanking, May 7, 1931--noon.

[Received 8:52 p. m.]^{40/}

1. Your 33, May 4, 8 p. m., to Nanking. Last sentence garbled but I understand Department to mean that we cannot accord reciprocity in the matter of personal status.

2. On May 4th Teichman handed to Hsu Mo a new draft of this article which Hsu Mo is now considering. New draft is based on text communicated in my April 28, noon,^{41/} the only changes being amendments introduced by the British Foreign Office. These amendments are indicated in next paragraph.

^{39/} Copy transmitted to the Department by the Minister without covering despatch; received June 11.

^{40/} Telegram in two sections.

^{41/} Par. No. 8, p. 830.

3. In paragraph (1) word "personalty" changed to "property". Paragraph (2) has been changed to read "All such cases of personal status where only British subjects or the property of British subjects are concerned will be outside the jurisdiction of the Chinese courts and will be dealt with by the competent British courts". Paragraph (3) has been amended to read "British consular officers shall take possession of the estates in China of deceased British subjects. They shall administer the same in all cases where no objection to such administration has been filed by an interested party in writing at a British consular office in China within 90 days after notice of death has been published by the competent consular office."

Where such objection is filed the provisions of paragraphs (1) and (2) will apply as the case may be. In cases of intestacy where there is no kin the immovable property of the deceased will be disposed of in accordance with the laws in China". Paragraph (4) remains the same and is the reciprocity clause to which I understand Department has received objection.

4. This draft is so similar to the Department's redraft of May 2nd^{42/} that I suggest that Department authorize me to hand it to Dr. Wang, after words "nationals of the United States of America" have been appropriately substituted for "British subjects", and minus the reciprocity paragraph (4) with a statement that this draft plus last paragraph of the Department's redraft of May 2nd relative to personal effects of transients is acceptable to us.

5. British Minister is prepared to accept paragraph regarding transients. As paragraph on reciprocity this is acceptable to British Government and British Minister is reluctant to drop it at this stage.

Johnson

(Page 842)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 8, 1931--noon.

34. For the Minister: Department's 31, May 4, 6 p. m.^{43/}

(1) By way of comment on the above, an extract is quoted below for you from the Department's reply to the British note of May 3 which transmitted a summary of instructions to Lampson:

^{42/} See telegram No. 33, May 4, 8 p. m., to the Consul General at Nanking, p. 837.

^{43/} Not printed; it reported the British Charge's communication of May 3, 1931. See footnote 32, p. 834.

[Here follows quotation of paragraphs 2 and 3 of the text, dated May 9, 1931, printed on page 849.]

(2) Regarding Hankow, the Department wishes you to keep in close touch with Lampson and, in case the situation should develop to such a point that he would seriously contemplate dropping the proposed reservation of Hankow, to inform him of this Government's willingness to make this concession simultaneously with the British, whereupon you would immediately inform the Department.

(Page 843)

Stimson

Memorandum by the Minister in China (Johnson)^{44/}

Nanking, May 8, 1931.

Mr. Shigemitsu, Japanese Charge d'Affaires, called and we discussed his visit to Tokyo. He said that the situation at Tokyo was very complicated because of the change in Government; that everyone was busy with things that did not matter. I inferred from what he said that the political situation which ensued upon the change of cabinet was such that very few seemed to have opportunity to discussion of the Chinese question.

Mr. Shigemitsu said that Japan was very anxious to reach an accord with China on the question of extraterritoriality and to that end was prepared to follow the method that was being used in the negotiations by the United States and Great Britain. He said that Japan's position was more complicated than our position because of their interests in Manchuria. I inferred from what he then said that Dr. C. T. Wang had insisted that Japan could not have freedom of residence and trade for its nationals in China except as a corollary to the relinquishment by Japan of the leasehold of Dairen, the removal of Japanese railway guards, presumably the return of the South Manchuria Railway, the giving up of Japanese concessions and the removal of Japanese naval vessels. Mr. Shigemitsu stated that this was the first time that Dr. Wang had injected these matters into the discussion of Japan's extraterritorial rights.

He pointed out that Japan had a great number of nationals and protected people who were living outside of the treaty port areas and enumerated something over a million Koreans in Manchuria alone and some two hundred thousand Japanese. Furthermore, he said Japan already possessed by agreement with China rights of residence and trade in Manchuria and in the area of Kiaochow.

^{44/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11.

He said that when China took the stand that Dr. Wang had taken the life line of Japan was really endangered. Japan's position in Dairen and along the South Manchurian Railway was not alone a sentimental one but was considered a military necessity. Japan after all had to take into consideration the position of Russia in the Far East and the five year plan of the Soviets and no Japanese government would permit them to face once more the situation which they had had to face some twenty-five years ago. If it were only a question of China proper he felt that it would be not so very difficult to reach an understanding but if Manchuria was injected into the picture then it was going to be very difficult indeed as Japan's position in Manchuria was a military position and Japan could not afford to see her first line of defense destroyed.

Mr. Shigemitsu stated that the new Government in Japan had come in on a platform of retrenchment and had announced that there must be a cutting down of army personnel and that this was making a great stir among the politicians and especially in those groups under the influence of the military.

Nelson Trusler Johnson

(Pages 843 and 844)

✓ ✓
Memorandum by the American Minister in China (Johnson) of a
Conversation With the British Minister in China (Lampson)^{45/}

Nanking, May 8, 1931.

I had lunch with Sir Miles today and in the course of conversation he informed me that he had telegraphed his Government in response to their request for an estimate of the situation stating that it was his opinion that he should proceed with the discussions here until they had cleared away all of the articles dealing with legal guarantees and possibly the preamble to the treaty and that when the point had been reached where they were in agreement on these matters it would then be time for a recess for the summer. He thought that after a summer's rest during which the Chinese could think over their position and get the People's Conference and the present political crisis into the background they could resume the negotiations about September with a better chance of success. Sir Miles stated that he felt that the issuance of the regulations covering the adjudication of cases involving foreigners and the mandate putting those regulations into effect on the first of January 1932 was a shrewd move on the part of the Chinese and might be considered as of advantage to us for it not only implemented some of the important guarantees for which we had been negotiating but it would prepare the minds of the Chinese for the treaty. It would put Dr. Wang in a position where he could say that the treaty merely contained provisions already the subject of domestic legislation.

^{45/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11. Substance reported by the Minister in his telegram of May 9, 1931, noon, from Nanking; received May 9, 6:35 a. m. (893.00/11432)

Sir Miles stated that he was now waiting for his Government's reply before deciding on his plans.

I remarked that it was a sad commentary on the whole situation that Dr. Wang Chung-hui, President of the Judicial Yuan, fountainhead of inspiration for the entire judiciary of China, author of constitutions granting protection to the life and property of citizens of China, should desert the Government and flee to the protection of a foreign settlement at the first sign of trouble.

Nelson Trusler Johnson

(Pages 844 and 845)

✓ ✓
The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 8, 1931--6 p. m.

35. For the Minister:

(1) Reference your May 6, noon, paragraphs 1 and 2.^{46/} You should say to C. T. Wang, as from me, that this Government, which has traditionally conducted its relations with the Chinese Government upon a basis of reciprocal good will, marked constantly by the American Government's consideration for China's interests, resulting in a continuous and noteworthy American feeling and manifestation of friendliness toward China, to which Dr. Wang has referred frequently, regrets that he should make use of a report, whatever its source, that "the American Government has attempted to persuade the British Government not to go too fast to meet the wishes of the Chinese Government in the matter of extraterritoriality" as occasion and basis to inject a suggestion of potential hostility into a serious negotiation between the Chinese and American Governments.

Dr. Wang intimates that this Government has been working behind the scenes with other governments against China's interests. The facts are simply that, since negotiations concerning extraterritoriality began in 1929, this Government has frankly indicated to the Chinese Government the policy which, in the belief of the American Government, should be followed for the sake of the future welfare of both countries. This Government has not hesitated to exchange views at the same time with other Governments concerned. The American Government has adhered consistently to the policy and principles to which it has openly and clearly indicated its commitment. This Government has been

gratified that the Chinese Government's simultaneous negotiations with the American and British Governments have proceeded smoothly and with an evident desire, until recently, on the part of all--a desire which on our part remains constant--to reach an honorable agreement to be adequately considerate of the interests of all concerned. The American Government's confidence in the moderation and justice of its own views has found confirmation in the fact that during the course of the negotiations another Government, possessing such a regard for China's interests as does the British Government, apparently is of the same view as ourselves respecting not only the provisions which have been tentatively agreed upon but also the solutions which should be adopted in connection with points still outstanding.

The American Government, animated by a desire to deal in a practical manner with a practical question and to reach a solution which will bring about the needed readjustments with the least amount of friction and hardship for all concerned, has pursued and expects to continue pursuing in its relations with China the course of cordial, candid friendliness in dealing with this as well as other problems. It is this Government's hope that Dr. Wang will not resort again to implied or express suggestions of the Chinese Government contemplating a departure on its own part from the course of wisdom and friendliness.

(2) Reference your May 6, noon, paragraph 3.^{47/}

(a) What C. C. Wu was told by the representative of the Department was that the exclusion of the four areas is regarded here as reasonable and logical and that any further discussion of this point should be held at Nanking instead of here;

(b) What the representative of the Department said regarding the 10-mile radius was that this Government would be ready to give consideration to any proposal which the Chinese might reasonably make to delimit more logically each of these areas. No statement was made that this Government would accept any limit arranged for these areas by C. T. Wang, Lampson, and you. No question was raised as to where or how a proposal on this subject by the Chinese should originate or be carried on;

(c) What the representative of the Department said regarding the 10-year term had reference to the treaty's duration, inclusive of the provisions on the excluded areas. He stated that the Chinese proposal of 3 years we regarded as inadequate; that a proposal of 5 years would be regarded as inadequate; that 10 years we regard as reasonable and in accord with the usual practice in important treaties; and that a proposal for a period of less than 10 years we would prefer not to discuss. He did not state that any number of years between 5 and 10 which might be agreed upon at Nanking would be acceptable to us.

Finally, he said that discussion of any possible further concessions should take place at Nanking.

^{47/}

See footnote 38, p. 840.

(3) You are informed that the Department does not regard Dr. Wang's reiterated assertion that "the last treaty would expire in 1934" as relevant in connection with the question of excluded areas, especially Shanghai. To be sure, the 1903 treaty between China and the United States^{48/} does come up for revision in January of 1934; but, whether this treaty is then terminated or extended, the Department does not consider its provisions to be determinative of the status either of Shanghai or of other treaty ports. In addition, extraterritorial rights in general do not rest upon this treaty's provisions but upon provisions of other treaties of unlimited duration and earlier date. The American Government has not wished to stand upon such rights, but they do exist. This Government's desire has been and is to reach with the Chinese Government an equitable and practical agreement to ensure restoration to China, when adequate protection can be afforded to foreign life and property by Chinese courts and other administrative agencies, of complete judicial jurisdiction throughout the territory of China.

With regard especially to Shanghai, the Department has tried to impress upon C. C. Wu that the proposal for exclusion of an area at Shanghai within a radius of 10 miles is not connected directly with the Shanghai extra-Settlement roads or other problems affecting the International Settlement as such. These problems are separate from the jurisdiction of courts question, which is the subject being dealt with in the present negotiations. With a view to devising a solution of these problems in which their peculiar difficulties can be adequately taken into account, the Department has been and continues ready to enter at any time, along with other powers most interested, into negotiations with the Chinese.

Stimson

(Pages 845-848)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 8, 1931--7 p. m.

36. For the Minister:

(1) In view of the fact that provisions of the proposed treaty regarding extraterritoriality contemplate radical changes in the rights and privileges of Americans in China and of the further fact that the Chinese Government may demand on January 13, 1934, a revision of the 1903 Chinese-American treaty, which defines various rights of United States consular officers in China, it is felt by the Department that it would be a wise

^{48/}

Treaty for the extension of commercial relations, signed at Shanghai, October 8, 1903, Foreign Relations, 1903, p. 91.

precautionary measure to have included in the new treaty or in an accompanying exchange of notes a provision regarding the rights and privileges of consular officers. The best way to define the rights and privileges of such officers probably would be to negotiate a consular convention between China and the United States, but just at the present time it would not appear advisable to make an effort in this regard. To attain the same purpose in part it would suffice to obtain an exchange of notes to be phrased somewhat as follows:^{49/}

"Pending the coming into force of a consular convention between the United States and China, the rights and privileges of the consular officers of China in the United States and of the consular officers of the United States of America in China (except the right of extraterritorial jurisdiction over nationals of the United States of America in those areas where the extraterritorial rights of the United States of America have been surrendered), as defined in the existing treaties between the two countries, shall remain in force, provided that the treatment accorded by either country to such officers of the other shall not be less favorable than that accorded to similar officers of the foreign power most favored in this respect."

(2) You will please consult with Lampson regarding this point and report his and your views.

Stimson

(Page 848)

The Under Secretary of State (Castle) to the British Ambassador
(Lindsay)

Washington, May 9, 1931.

My Dear Mr. Ambassador: I have to acknowledge the receipt of Mr. Campbell's^{50/} letter of May 3, 1931,^{51/} enclosing a summary of the instructions sent by the British Foreign Office to the British Minister to China on the subject of extraterritoriality, and stating first, that although the argument that foreign rights in Shanghai would lapse automatically in three years had not been presented to the British Government, it would contest

^{49/} Quotation not paraphrased.

^{50/} Ronald Ian Campbell, Counselor of the British Embassy, temporarily in charge.

^{51/} Not printed.

such an argument; secondly, that the British Government understands that the attitude of the Government of the United States in regard to reserved areas coincides exactly with its own; and thirdly, that authority has been given to the British Minister to China to give way to the Chinese Government as regards Hankow in the last resort, but not as regards Shanghai (the whole area) or Tientsin or at present Canton.

The Department is gratified to note that the attitude of the British Government on these points coincides with that of the American Government.

The Department notes with interest the suggestion of the British Government, referred to in the summary of the instructions of the British Minister to China, that an international commission be created, after the coming into force of the new Treaty, to study and make recommendations in regard to the excluded areas. It is believed that this suggestion, if adopted, would open the way for a final solution of the intricate problems involved in the protection of foreign interests in the reserved areas, particularly at Shanghai.

With regard to Hankow, the Department trusts that, in case the point arrives at which the British Minister to China deems it advisable to give way, his intention so to do may be made known in advance or immediately to the American Minister to China and/or to the Department.

I am [etc.]

W. R. Castle, Jr.

(Page 849)

The Minister in China (Johnson) to the Secretary of State

Nanking, May 9, 1931--11 a. m.

[Received 6:45 p. m.]

My telegram of May 7.

1. Following text of article 2 regarding personal status matters has been worked out between Teichman and Hsu Mo. It has been referred to British Government with a recommendation that it be accepted as British Minister believes it will be acceptable to the Chinese.

2. "Article 2. In all matters of personal status, among which are included all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, dower, majority, guardianship, trusteeship and interdiction, and in all matters relating to succession whether by will or on intestacy, and to the distribution and winding up of estates and family law in general, English law will be applied by the Chinese courts as regards British subjects in China.

All such cases of personal status where only British subjects are concerned will at the option of the parties concerned be dealt with outside the jurisdiction of the Chinese courts.

3. British consular officers shall take temporary possession of the estates in China of deceased British subjects. They shall administer the same in all cases where no objection to such administration has been filed by an interested party in writing at a British consular office in China within 90 days after notice of death has been published by the competent consular office. Where such objection is defended the provisions of paragraphs 1 or 2 will apply as the case may be. In cases of intestacy where there is no kin the immovable property of the deceased will be disposed of in accordance with the laws of China.

4. In all the above-mentioned matters the principles of private international law will be likewise applied by the courts of the United Kingdom as regards Chinese citizens without any discrimination against them as compared with the nationals of any other country."

Johnson

(Page 850)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 9, 1931--noon.

38. For the Minister: Department's 35, May 8, 6 p. m., to Nanking.

(1) Reference Department's April 27 draft on extraterritoriality.^{52/}
The articles which correspond in this draft to those upon which the Chinese and British negotiators have so far reached accord, as reported by you, resemble in substance those of the Chinese-British draft. Special note should, however, be made of the following features in the Department's draft:

Article 2. Special Chambers: There has been included provision for the hearing before these chambers of cases arising in places where such chambers are established and involving Americans as plaintiffs or complainants.

Article 2. Special Chambers; Article 3. Legal counselors;
Article 5. Arrests, imprisonment, detention, and bail: There has been considerable change of phraseology in these articles.

^{52/}
Ante, p. 815.

Article 12. Shipping: At the end of this article there has been added a clause designed to give consular officers continued control over the internal affairs of merchant vessels.

Article 15. Personal status matters: For this, see the Department's 33, May 4, 8 p. ..., to Nanking.

Article 19. Provisions of existing treaties: While the Department has not agreed to this, the following phraseology is desired for this article by the Chinese Legation: "All provisions in the existing treaties between China and the United States of America relating to matters of jurisdiction shall be abrogated and cease to be operative."

Article 20. Duration and ratification: The phraseology of this article necessarily is very tentative, since the Chinese have not yet agreed to the 10-year period of duration. C. C. Wu desires the preparation of a French text to be used as the authoritative text in case of dispute. To this the Department has not yet agreed, but without having carefully studied the matter it does not believe there are any insurmountable difficulties to Wu's proposal.

Exchange of notes (8th section), Mutual relations of courts: This additional paragraph has been inserted by the Department for the purpose of having some provision for the mutual relations between the Chinese courts and the American courts continuing to function in the excluded areas.

(2) This new draft should be compared by you with the Chinese-British draft and a copy communicated to Lampson. After you have discussed it with him, the Department wishes to have the benefit of your observations.

(3) There is being forwarded by mail to you a copy of the April 27 draft which was telegraphed to you by the Department.

Stimson

(Pages 850 and 851)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 12, 1931--5 p. m.

40. For the Minister: Your May 7, noon, and May 9, 11 a. m., from Nanking.

(1) The Department would be willing to accept the Teichman-Hsu Mo draft of the article regarding personal status matters if this draft proves acceptable to the British and Chinese Governments and if the reciprocity clause be deleted. Also the Department would prefer retaining the clause regarding estates of transients. The Department will discuss this article's redrafting when discussions are resumed with C. C. Wu, who returns this week after an absence from Washington.

(2) The main difficulty in the way of American acceptance of the reciprocity clause is due to existence in several States of a law which prohibits marriages between persons of white and of Mongolian race. Should the Chinese demur from accepting a draft in which reciprocity is not granted, it will be pointed out to them that, though the United States is less liberal in this respect than Great Britain, the former is more liberal than the latter as regards reciprocity in matters such as military requisitions, forced loans, and arbitration of commercial controversies. (Your April 28, noon, from Nanking, paragraphs 6 and 7.)

Stimson

(Pages 851 and 852)

The Secretary of State to the Ambassador in Great Britain (Dawes)

[Paraphrase]

Washington, May 13, 1931--5 p. m.

130. (1) The Department has been informed by the British Embassy that the British Government considers as most important the question of personal status and fears lest more has been given up here in the American negotiations with C. C. Wu than the British Government deems it wise to surrender.

(2) The British Foreign Office may be informed by you that this personal status matter has been dealt with in an exchange of telegrams the Department has had with Nelson T. Johnson. The last telegram, dated May 12, said in part as follows:

"Here follows quotation of paragraph (1) of telegram No. 40, May 12, 1931, 5 p. m., to the Consul General at Nanking, printed supra.7 (The text of this article still is tentative and without commitment.) The main difficulty in the way of American acceptance of the reciprocity clause is due to existence in several States of laws which are discriminatory as regards the question of marriage."

(3) This appears to the Department to be another example of a Chinese effort to play off Americans and British, or vice versa, for the object of obtaining further concessions.

Stimson

(Page 852)

The Consul General at Nanking (Peck) to the Secretary of State

Nanking, May 13, 1931--9 p. m.
 [Received May 13--12:10 p. m.]

21. The National People's Convention today issued a manifesto the substance of which is as follows:

In order that the existence of the Chinese race may be protected, an obstacle to the peace of the world removed, and a blot on modern civilization wiped out, and, believing that the powers of the world will understand and agree, and the Chinese people will give uniform support, it is declared: (1) that the Chinese people do not accord recognition to any of the unequal treaties previously concluded between the foreign nations and China, and (2) that in accordance with the teachings of the late leader the National Government shall within the shortest possible period of time put into realization the freedom of China and her complete equality among the nations.

Peck

(Page 853)

Memorandum by the Minister in China (Johnson)^{52/}

Nanking, May 14, 1931.

I called upon Dr. C. T. Wang, Minister for Foreign Affairs, this morning and I read to him as coming from the Secretary of State paragraph one of Department's telegram of May 8, 6 p. m. to Nanking, being the Secretary's reply to Dr. Wang's communication to me in my conversation with him of May 6th. Dr. Wang said that reading between the lines he interpreted this as an admission on the part of the Secretary of State that the American Government had attempted to persuade the British Government not to go too fast in its negotiations with him on the subject of extraterritoriality. He said that he was gratified to know that the American Government had been and would continue to be frank in regard to these matters. He said that all he wanted to do was to prevent any unfriendliness being injected into the situation.

I told Dr. Wang that I of course could not prevent his drawing any conclusions which he might choose to draw but that there was nothing in my records to convince me that my Government was attempting to play politics in this matter, that all along we had been ready, willing and anxious to work out with the Chinese Government some practical method of bridging the gap between extraterritoriality and non-extraterritoriality; that we had never attempted to deceive the Chinese Government as to what we thought this practical method should be. I then read to him paragraph two of the Department's telegram giving the Department's attitude on the questions of reserved areas and the term/s/ of the treaty.

Nelson Trusler Johnson

(Pages 853 and 854)

^{53/}

Copy transmitted to the Department by the Minister without covering despatch; received June 11.

The Consul General at Nanking (Peck) to the Secretary of State

Nanking, May 13, 1931-9 p. m.
 /Received May 13-12:10 p. m./

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Nelson Trusler Johnson

(Pages 853 and 854)

53/

Copy transmitted to the Department by the Minister without covering despatch; received June 11.

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The Minister in China (Johnson) to the Secretary of State

Nanking, May 19, 1931--9 a. m.
[Received 3:05 p. m. 54/]

Your 38 [40], May 12, 5 p. m., to Nanking.

1. Draft of personal status article drafted by Hsu Mo and Teichman is acceptable to Chinese. British Government desire a small change in second paragraph which Teichman is having difficulty getting Chinese to accept. British Government have no objection to paragraph about estates of transients but hesitate to inject it into their draft at this late date.

2. British Minister who has been in Shanghai for a week returned and saw C. T. Wang today with the result that they have agreed upon following texts:

"Article 15. Rights of residence and trade. The existing rights enjoyed in China by subjects of His Majesty to travel, reside, establish firms, open branches, acquire or lease property, work and engage in industry or commerce, shall remain unimpaired."

British Minister will address a note to the Minister for Foreign Affairs at the time of signing the treaty referring to this article and stating:

"His Majesty's Government reserve to themselves the right to raise the question of trade and residence throughout the interior of China at such later date as they may deem appropriate."

3. "Article 19. Provisions of existing treaties. The provision of the existing treaties between the high contracting parties which are in conflict with the present treaty are hereby abrogated."

4. "Article 20. Authorized text. The present treaty has been drawn up in Chinese and in English pending the preparation of a French text on which the two high contracting parties will agree as soon as possible and which will be authoritative in case of divergence between the Chinese and English texts."

5. In addition the following two letters were agreed upon:

"(Notes from Minister for Foreign Affairs to His Britannic Majesty's Minister)

Sir: With reference to the treaty concluded between us today, I have the honor in reply to Your Excellency's inquiry to state that the work of compiling the modern Chinese codes and laws has now been completed and that a copy of the *Ssu Fa Li Kuei* of the National Government issued by the Judicial Yuan containing the texts of all the important codes, laws, ordinances and regulations promulgated down to the present time, a revised edition of which is in course of preparation, will be transmitted to Your Excellency as soon as possible. I have further the honor to inform Your Excellency that, with a view to enabling British and other foreign nationals

54/
Telegram in three sections.

in China to familiarize themselves with Chinese laws and judicial procedure, translations of the principal Chinese codes, laws, ordinances and regulations are being made and will be placed on sale, such translations being checked by and prepared under the aegis of the competent Department of the Chinese Government. It is of course understood that Chinese is and remains the only authoritative text of Chinese codes, laws, ordinances and regulations."

"Sir: With reference to the treaty concluded between us today, I have the honor to assure Your Excellency as follows:

Where British subjects are involved in minor incidents or offenses such as infractions of municipal regulations, motorcar cases and so on, the Chinese police will so far as may be practicable assure themselves of the identity of the individuals concerned by taking their names and addresses and will not arrest them or detain them in police stations.

It is understood that the liability of a British subject standing bail for a party involved in court proceedings will in all cases be limited to the amount of actual bail fixed by the court.

The qualifications of British professional men such as doctors, chartered accountants, architects and engineers, will, if necessary, on production of proper evidence including registration with the Chinese Government, where such registration is required by Chinese law, be recognized by the Chinese courts.

In connection with legislation providing for the examination of commercial books and correspondence it is understood that in the case of British firms the certificates of duly qualified chartered accountants will be accepted with a view to dispensing as far as may be practicable with such examination."

6. The following three additional paragraphs to the (unpublished) agreed minute were also agreed upon.

"Sir Miles Lampson, referring to article 10 of the treaty, assured Dr. Wang that it was to be understood that Chinese citizens in the United Kingdom would enjoy in respect of the matters referred to in the said article the same exemptions as were enjoyed by the subjects or citizens of any other foreign country.

Dr. Wang informed Sir Miles Lampson, with reference to clause 5 of article 5 of the treaty, that it was of course to be understood that the courts would not intentionally discourage such applications by unnecessarily imposing the maximum fine.

Referring to clause 2 of article 14 of the treaty, Dr. Wang assured Sir Miles Lampson that it was to be understood when any such cases were dealt with outside the jurisdiction of the Chinese courts they would be dealt with by the competent courts of His Britannic Majesty."

7. The discussion came to an end when it reached the question of reserved areas. British Minister left with Dr. Wang the following proposal which Dr. Wang refused even to discuss. Whether or not discussion proceeds farther awaits further instructions from London.

"Article 16. (1) The transfer of jurisdiction over British subjects from the British to the Chinese courts as provided in this treaty shall not apply in areas where Chinese administrative jurisdiction does not apply.

(2) It is agreed that the said transfer of jurisdiction over British subjects from the British to the Chinese courts shall not apply within the municipal areas at Shanghai, Tientsin, Hankow and Canton as shown on the attached maps.

(3) It is further agreed that a joint commission shall be set up on a date to be mutually agreed upon after the entry into force of the present treaty to study insofar as British interests are concerned the problems of the areas specified in paragraph 2 and that subject to the concurrence of other interested governments negotiations on the basis of the recommendations of this commission shall be entered into within a period of 10 years from the date of enforcement of the present treaty.

(4) The jurisdiction of the British courts shall continue unimpaired in the areas specified in paragraph 2."

Johnson

(Pages 854-856)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, May 19, 1931--4 p. m.
[Received May 19--9:20 a. m.]

Department's 36, May 8, 7 p. m., to Nanking. I have discussed with Lampson the question of the advisability at this time of negotiating with China a consular convention, and Lampson has referred the matter to the British Government. Both he and his Government feel it would not be opportune at this time to inject this question into the extraterritorial negotiations. I concur with the British Government's view that consular functions are protected by the provisions of article 19 in the proposed treaty in regard to provisions of existing treaties. The British Government expects this subject to be taken up in connection with a commercial treaty when the present treaty has been disposed of. A draft of a commercial treaty was presented some 2 years ago by the British Government to the Chinese Foreign Office. Negotiations did not, however, begin, for the Chinese brought up at that time the extraterritoriality question.

Johnson

(Page 857)

The Minister in China (Johnson) to the Secretary of State[Paraphrase]Nanking, May 19, 1931--5 p. m.
[Received May 19--9.25 a. m.]

Your 35, May 8, 6 p. m. I read paragraph (1) of this telegram to C. T. Wang, and he chose to interpret it as a Department admission of having attempted to slow down the British. I also read paragraph (2) to him. In the press there is some intimation that the Government may be intending to transmit to us officially the text of their mandate and regulations mentioned in my May 5, 3 p. m. Would the Department have any advice to give me in the event of such action by the Chinese Government? I have been thinking about refusing to accept such a communication. In view of the present negotiations I have expected the Foreign Office to adopt the wise course and not communicate the mandate officially to me.

Johnson

(Page 858)

The Minister in China (Johnson) to the Secretary of State[Paraphrase]Nanking, May 20, 1931--9 a. m.
[Received 3:25 p. m.]

Department's 38, May 9, noon.

(1) I have brought the Department up-to-date (see my May 19, 9 a. m. and May 19, 3 p. m.) on the British negotiations, inclusive of the drafts agreed upon and pending. Lampson has asked that I obtain for him any new matter which the Department and C. C. Wu may be able to agree upon for possible use here in their negotiations.

(2) As the matter now stands, an agreement has been reached by the British and Chinese on all points save the preamble, the reserved areas, and the duration of the treaty.

(3) The preamble probably will not give trouble.

(4) Nothing has been accomplished with reference to reserved areas. Lampson's instructions are worded in such fashion that he has not been willing to take the risk of even an intimation to the Chinese Foreign Office of his readiness to make any concession on this point, although his instructions contemplate yielding Hankow and, if need be, Shameen. The initiative in making a concession in this regard will have to be taken by the British and us since there is no evidence that C. T. Wang will. Lampson is seeking additional instructions concerning this question and, unless authorized to make a concession, contemplates returning for a recess to Peiping, not sooner than May 25 and not later than [May 30?], as he does not expect Dr. Wang to give in.

(5) In regard to the treaty's duration, C. T. Wang offered a 5-year treaty and 3 years for Shanghai and the articles on Special Chambers and legal counselors. Lampson replied that he must insist upon a 10-year treaty covering Shanghai and 7 years for Special Chambers and legal counselors. The matter remains unsettled.

(6) Respecting our comments on the American draft as a whole, Lampson and I feel it is a good one. The draft still contains some matters which the British have been unable to get here in their negotiations, so we shall be interested to learn whether the Department is able to obtain C. C. Wu's acceptance of them. I apprehend from something said to me the other day by Dr. Wang that you will be unable to get Chinese agreement to the new provision in article 2 for cases involving Americans as plaintiffs and defendants to be heard before Special Chambers.

(7) As to the last paragraph of article 3 on legal counselors, the Department's wording appears to me to be not so good as that of the paragraph in the British text which I communicated to the Department in my March 28, 10 a. m., paragraph 6. The American draft says, "each of the respective Chinese courts referred to in article 2 shall begin to exercise jurisdiction," etc., while the British text says, "the Chinese courts referred to in article 1 shall not begin to exercise jurisdiction," etc. I think it preferable for the word "not" to be retained.

(8) Adding philanthropic institutions to article 12 is wise. The Chinese are asking for, and the British will agree to, the addition of the words "of such organizations" following the words "comply with Chinese laws relating to registration" in the first sentence of article 12.

(9) Regarding the long letter annex, Lampson once tried to throw all the British additional matters into a single letter, but Hsu Mo was found to be unwilling. The American form appears preferable to both of us if it can be obtained. Nor have the British been able to get the Chinese to agree to putting into letters the matter which now is contained in their minutes, agreed though not to be published.

(10) The political situation is most tense. The Chinese here seem to take a very gloomy view and to be persuaded of an almost inevitable outbreak of warfare. Sun Fo and Wang Chung-hui both remain at Shanghai, where responsible Government members are pleading with them to return to Nanking. From statements made to me here, I am persuaded that the Government doubts C. C. Wu's loyalty. Wang Ching-wei, who has left Hong Kong, is reported en route to Tientsin. The Chinese say that an outbreak of war would involve more territory and active military leaders than previously. The Cantonese group seems to be, at any rate for the moment, definitely out in opposition to the Government. Marshal Chang Hsuehliang left today by plane for the North after an apparently cordial and successful visit here.

Johnson

(Pages 858-860)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 20, 1931--noon.

42. For the Minister: Your May 19, 5 p. m., from Nanking.

In regard to receiving from the Chinese Government, should it offer, an official communication of texts of the recent mandate and regulations, the suggestion is made that you consult in your discretion your most interested colleagues in advance.

It is the Department's belief that the same attitude should, if possible, be assumed by all of you, but particularly by you and Lampson. If such communication is offered to you, the Department feels it desirable for you to point out to C. T. Wang that this Government still is negotiating with the Chinese Government in the expectation and hope that a solution be found of the remaining matters on which no accord has yet been reached, therefore, the American Government would deplore an official statement to it by the Chinese Government that the latter is abrogating treaty provisions, since the prospect of reaching an amicable agreement would be prejudiced by such action. If C. T. Wang should insist, in spite of such statement by you, on making the communication, then there would seem to be no course for you except to receive the communication. You would thereupon do this without making further comment.

In the light of the foregoing and of the suggested exchange of views, you may decide as to what is advisable.

The Department would appreciate receiving information on the instructions or intention of Lampson in this connection.

Stimson

(Page 860)

The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, May 20, 1931--6 p. m.

43. For the Minister: Your May 19, 4 p. m., from Nanking.

(1) The Department in its 36, May 8, 7 p. m., expressed the view specifically that "just at the present time it would not appear advisable to make an effort" to negotiate a consular convention.

(2) The opinion of the Department has been and is that, if reasonably interpreted, the provision made in the American draft of April 27, article 19, should ensure to consular officers the continuance of their existing rights and privileges other than that of the exercise of judicial jurisdiction over American nationals. The Department is inclined to believe, however, in the light of past experience, that Chinese Governments later may attempt the curtailment and abridgment of the rights of consular officers through the process of interpretation by deciding in practice which provisions of old treaties are abrogated and which remain in force. The fear of this prompted the Department to suggest the consideration of an exchange of notes, in connection with the present negotiations, along the lines of the text quoted in its 36, May 8, 7 p. m., definitely removing the question of consular rights and privileges from the realm of "interpretation".

(3) There will inevitably be complaints, some imaginary and some real, after our relinquishment of extraterritorial jurisdiction over Americans, against the manner in which jurisdiction over Americans is exercised by the Chinese authorities. In these cases the chief means of protection will be through representations to the Chinese authorities by the consular officers. After abolition of extraterritorial rights, the Chinese, both the public and officials, may be expected to overlook the fact that both by treaty and by international law it is the right and duty of consular officers to protect the interests of their nationals, and, if the question is not left provided for as suggested by the Department, the Chinese may attempt to hamper the efforts of consular officers to protect their nationals. No matter what provisions we devise, the Chinese probably will attempt to do this, but it is believed that the American draft of article 19, plus the exchange of notes, as suggested by us, would make the American position stronger than would article 19 of either the American or the British draft, minus the exchange of notes. In this connection, the Legation in its 237, April 25, 4 p. m.^{55/} reported the threat by the Chinese authorities at Mukden to jail the German Consul who was attempting to afford protection to a German national charged with allegedly violating the consumption tax regulations.

(4) Therefore, the Department expects to discuss this matter with
C. C. Wu. Stimson

(Pages 861 and 862)

^{55/}
Not printed.

The Secretary of State to the Consul General at Nanking (Peck)

Washington, May 19 [20], 1931--7 p.m.

44. For the Minister. Your May 19, 9 a. m., from Nanking, paragraph 7.

The Department desires to be informed of the approximate boundaries of the municipal areas at Shanghai, Tientsin, Hankow, and Canton to be shown on the maps which the British intend to submit with Article 16. If possible, give outline by telegram and details by mail despatch.

Stimson

(Page 862)

Memorandum by the Minister in China (Johnson)^{56/}

Nanking, May 21, 1931.

In the course of conversation today Dr. C. T. Wang, Minister for Foreign Affairs, inquired of me as to the attitude of the American Government toward the payment of Chinese taxes by American citizens. I told Dr. Wang that our attitude was one of willingness that our citizens should pay as a voluntary contribution the usual taxes that are collected in the municipalities and other places on land and houses for the purpose of building roads, maintaining streets and giving police and fire protection.^{57/} Dr. Wang stated that the British were prepared to have their people submit themselves to the payment of Chinese taxes. He said that he was going to raise this question shortly, particularly as regards the interior of settlement and concession areas. He remarked that this question of taxation was probably the most important one insofar as "die-hardism" was concerned and expressed the feeling that once foreign citizens resident in the International Settlement and foreign concessions had to pay Chinese taxes "die-hardism" would vanish.

Nelson Trusler Johnson

(Page 862)

^{56/} Copy transmitted to the Department by the Minister without covering despatch; received July 9.

^{57/} See also pp. 981 ff.

The Minister in China (Johnson) to the Secretary of State

Nanking, May 23, 1931--10 a. m.
[Received May 23--9:25 a. m.]

No maps have as yet been introduced into this discussion. British Minister showed me yesterday a Chinese municipality land office map of the area of the municipality of Greater Shanghai which covers a large amount of territory outside of and surrounding the Chinese city of Shanghai, the International Settlement, extending from the Woosung forts quite a distance up the Whangpoo River. We both feel that area thus defined would be suitable definition of reserved area of Shanghai. It is impossible accurately to describe boundaries in a telegram. I am asking Shanghai to obtain copies and forward them immediately. British Minister also showed me a similar map of the Tientsin area which was deficient only in that it did not include Tientsin race track and foreign homes in that immediate neighborhood. When final discussion comes it will be necessary to add to that map. British Minister had no maps of either Hankow or Canton areas. I am instructing Hankow, Tientsin, and Canton to obtain and forward to me at once authoritative maps of municipal areas at those places which I shall send at once to the Department.

Johnson

(Page 863).

The Minister in China (Johnson) to the Secretary of State

Nanking, May 24, 1931--9 a. m.
[Received 10:30 a. m.]

British Minister handed to me the following draft of article 21 on duration of the treaty which has been accepted by the Chinese and has been communicated to London for approval.

"Article 21. The present treaty shall as from the date of its coming into force, except as otherwise provided in articles 2, 3 and blank, be mutually and reciprocally binding for a period of blank years, at the end of which period the treaty may, in response to the demand of either party made 6 months prior to the expiration of the period, be revised by negotiation between the parties thereto. If no agreement is reached in regard to such revision within this period, the treaty shall become null and void. Should neither party demand such revision, the treaty shall continue in force, provided however that any time after the expiration of the said period either party may notify the other of its desire to revise or terminate the treaty, which shall then, if no agreement is reached in regard to revision or if notice to terminate is given, as the case may be, become null and void 6 months after the date of such notification. It is understood that the provisions in existing treaties abrogated under article 19 of the present treaty will not be revived upon its termination."

Following additional paragraph to be added to article 2.

"The arrangements in connection with the Special Chambers to be established by the Chinese Government shall remain in force for such period as the Chinese Government may deem appropriate, not being less than blank years."

Following additional paragraph to be added to article 3:

"The arrangements in connection with the legal counselors to be appointed by the Chinese Government shall remain in force for such period as the Chinese Government may deem appropriate, not being less than blank years."

I understand that term of treaty which Minister is going to insist upon will be 10 years, while term of special provisions will be 5. These periods have not as yet been acceptable to the Chinese.

Johnson

(Pages 863 and 864)

The Minister in China (Johnson) to the Secretary of State

Nanking, May 26, 1931--noon

Received May 26--10:15 a. m. ^{58/}

My May 25, 2 p. m. ^{59/}

1. As the result of long discussion yesterday morning British Minister and Dr. Wang reached an understanding which British Minister has reduced to following draft article and which he has presented to Wang this morning and telegraphed to his Government.

Subjects of His Majesty in the area of greater Shanghai, as shown on the attached map, shall not be amenable to the jurisdiction of the Chinese courts during a period of 10 years from the date of the coming into force of the present treaty, provided always that a settlement of the question of jurisdiction in the said area may be reached by negotiation and agreement between the two high contracting parties at any time after the expiry of 5 years from the same date. Subjects of His Majesty in the area at Tientsin shown on the attached map shall not be amenable to the jurisdiction of the Chinese courts during the 5 years from the date of the coming into force of the present treaty. Subjects of His Majesty in the areas above stated shall be liable for the payment of Chinese taxation as provided in article 6 of the present treaty, provided such taxation is equally paid by Chinese citizens and other foreign nationals in the said areas.

^{58/}

Telegram in three sections; sec. 3 not printed.

^{59/}

Not printed.

Exchange of notes. His Majesty's Minister to the Minister for Foreign Affairs:

"Sir, with reference to article 16 of the treaty concluded between us today, I have the honor to inform Your Excellency that His Majesty's Government in the United Kingdom are prepared to support immediate negotiations for a solution of the question of the extra-Settlement roads at Shanghai subject to satisfactory arrangements being made in regard to the policing and maintenance of the said roads and the payment of rates and provisions of municipal services in the areas in question. I have further the honor to declare that His Majesty's Government in the United Kingdom are prepared to enter immediately into negotiations for the rendition of the British Concession at Canton on the understanding that all public and private property rights and interests will be duly safeguarded in the terms of such rendition.

I have the honor to request Your Excellency's confirmation of my understanding that the jurisdiction of the British courts in the areas specified in article 16 above will continue in force as long as subjects of His Majesty, in the said areas, are not amenable to the jurisdiction of the Chinese courts; and further that under the provisions of article 18 of the treaty subjects of His Majesty resident in areas in China in which Chinese administrative jurisdiction does not at present apply will enjoy under such exemptions from Chinese jurisdiction as may be enjoyed by the nationals of any country."

Minister for Foreign Affairs to His Majesty's Minister:

"Sir, I have the honor to acknowledge receipt of Your Excellency's note of today's date which reads as follows (here follows note in full).

"I have the honor to take due note of Your Excellency's declarations and to confirm your understanding quoted above as correct."

Johnson

(Pages 864 and 865)

Memorandum by Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs of a Conversation Between the Chief of the Division (Hornbeck) and the Chinese Minister (C. C. Wu)

Washington, 7 May 27, 1931.

Dr. C. C. Wu and Mr. Weigh^{60/} called this morning by appointment and resumed discussion of extraterritoriality.

Dr. Wu stated that he was prepared to make another proposal in regard to the question of excluded areas. He said that the Chinese Government could not agree to the exclusion of four areas but was prepared to agree to the exclusion for a period of three years of an area at Shanghai to be shown on a specially prepared map but which, for the purpose of description, might be designated as "Greater Shanghai" provided that we were prepared to enter into negotiations in regard to the extra-Settlement road question at Shanghai.

Mr. Hornbeck then informed Minister Wu that he understood that negotiations were already under way at Shanghai between the Chinese and the Settlement Municipal Authorities in regard to the extra-Settlement road question. Minister Wu replied that he was not aware of this.

Mr. Hornbeck then inquired if the Chinese Government expected the negotiations in regard to the extra-Settlement road question to be concluded before the new Treaty went into effect. After some discussion of the point it appeared that this was what the Chinese Government desired.

There ensued a discussion of principles in regard to the question of excluded areas at the conclusion of which Dr. Wu stated he hoped we would give him a reply, at our convenience, to the proposal which he had made.

It was arranged, however, for Mr. Weigh and Mr. Jacobs to meet together for the purpose of re-drafting some of the Articles of the Department's draft of April 27, 1931. Mr. Hornbeck mentioned in this connection that there was one new matter which he would suggest that Mr. Jacobs discuss with Mr. Weigh, namely, the drafting of a provision in regard to the rights and privileges of consular officers after the relinquishment of extra-territorial rights.

Mr. Weigh and Mr. Jacobs arranged to meet tomorrow afternoon, May 28, to begin their re-drafting.

(Page 866)

^{60/}

Ken-Shen Weigh, Third Secretary of the Chinese Legation.

The Under Secretary of State (Castle) to the British Ambassador
(Lindsay)

Washington, May 27, 1931.

My Dear Mr. Ambassador: Referring to the summary of recent correspondence between His Majesty's Principal Secretary of State for Foreign Affairs and the British Minister to China in regard to extraterritoriality negotiations, dated May 19, 1931, which you were so good as to hand to me on May 20,⁶¹ I am pleased to say that the views expressed in this summary are substantially in accord with the views of the Department of State.

The Department notes with particular interest the statement of the position of the British Government as found in the penultimate paragraph of the summary, as follows:

"While His Majesty's Government would if necessary countenance a Treaty reserving only Tientsin and a wide Shanghai area, an offer to surrender Hankow and Canton should only be made as a final step in securing a Treaty which the Chinese Government would definitely accept. His Majesty's Government would not wish to put themselves in the position of having offered to surrender Hankow and Canton without having at the same time secured a definite treaty containing adequate safeguards."

With this view the Department of State finds itself in complete concurrence.

With the summary under reference before it, the Department has drafted a new formula which it has been on the eve of submitting simultaneously through your Embassy to the British Foreign Office for consideration and by telegram to the American Minister to China for consideration in conference with Sir Miles Lampson, which it hoped might be deemed worth proposing to the Chinese, providing for the reservation of all four of the areas which have been under discussion.

However, the Department is just now in receipt of telegrams from the American Minister to China which indicate that Sir Miles Lampson has proposed to the Chinese Minister for Foreign Affairs a formula with regard to reserved areas which cannot but disclose to the Chinese that the British negotiators are prepared to dispense with the reservation of Hankow and Canton.

Under these circumstances, the Department abandons its intention to submit for present consideration a new formula designed to effect reservation of the four areas and expresses the hope that, in having proposed to the Chinese, though tentatively, a formula which involves the non-reservation of Hankow and Canton, the British negotiators will have, at the same time, obtained from the Chinese negotiators a commitment to a definite treaty containing adequate safeguards.

I am [etc.]

W. E. Castle, Jr.

(Pages 567 and 568)

^{61/}
Not printed.

The Under Secretary of State (Castle) to the British Ambassador
(Lindsay)

Washington, May 27, 1931.

My Dear Mr. Ambassador: Referring to the summary of recent correspondence between His Majesty's Principal Secretary of State for Foreign Affairs and the British Minister to China in regard to extraterritoriality negotiations, dated May 19, 1931, which you were so good as to hand to me on May 20,^{61/} I am pleased to say that the views expressed in this summary are substantially in accord with the views of the Department of State.

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I am [etc.]

W. R. Castle, Jr.

(Pages 567 and 568)

^{61/}

Not printed.

The Minister in China (Johnson) to the Secretary of State

Nanking, May 29, 1931--11 a. m.
Received May 30--6:10 a. m. ^{62/}

1. I now have before me complete text of Sino-British treaty with the exception of article 22 on ratification which is yet to be agreed upon. This text represents all that has been agreed to between Sino-British negotiators. Having compared it with Department's draft of April 27 I have following comments to make.

2. Article 1. Opening words of Department's draft appear below. I suggest use of following from British text:

"Except as otherwise provided by the present treaty nationals of the United States of America shall as from its coming into force be entitled to the protection, et cetera."

3. Article 3. In paragraph 5 of this article American text reads "and at their discretion shall bring such observations to the notice of, et cetera." British text reads "and at the request of any of the interested parties shall bring such observations to the notice of, et cetera."

4. Article 18. Excluded areas. Text of British article in regard to this question as worked out between British Minister and Wang and referred to British Government for approval now reads:

"(1) Subjects of His Majesty in the areas of greater Shanghai, as shown on the attached map, shall not be amenable to the jurisdiction of the Chinese courts during the 5 years from the date of the coming into force of the present treaty. It is agreed that discussions will be entered into within the said period of 5 years on the subject of the arrangements to be made at the end of the said period. In the absence of a settlement of the question of jurisdiction by negotiation and agreement between the two high contracting parties at any time after the expiry of the said 5 years, subjects of His Majesty shall not become amenable to the jurisdiction of the Chinese courts until the expiry of 10 years from the coming into force of the present treaty.

(2) Subjects of His Majesty in the area at Tientsin, shown on the attached map, shall not be amenable to the jurisdiction of the Chinese courts until the expiry of 5 years from the date of the coming into force of the present treaty.

(3) Subjects of His Majesty in the areas above specified shall be liable for the payment of Chinese taxes as provided in article 6 of the present treaty, provided such taxation is equally paid by Chinese citizens and other foreign nationals in the said areas."

In this connection please see my telegram May 27, 5 p. m. ^{63/}

5. Blanks in British article 21 communicated in my May 24, 9 a. m. now filled in as follows:

^{62/} Telegram in three sections.

^{63/} Not printed.

Blank, article 16; second blank, period of 10 years. Blank in additional paragraph to article 2 is 5 years and in additional paragraph to article 3, 5 years.

6. Agreed minute of interview which is not to be published contains following additional matter:

"Referring to the declaration attached to the treaty to the effect that the Chinese courts will ensure to the persons and property of subjects of His Majesty due protection in accordance with international law and the general practice of nations, Dr. Wang assured Sir Miles Lampson that it was to be understood that the said Chinese courts assuming jurisdiction over subjects of His Majesty would be strictly immune from external interference by any nonjudicial authority.

Dr. Wang informed Sir Miles Lampson, with reference to clause 5 of article 5 of the treaty, that it was of course to be understood that the courts would not intentionally discourage such applications by unnecessarily imposing the maximum fine.

Referring to clause 2 of article 14 of the treaty, Dr. Wang assured Sir Miles Lampson that it was to be understood that where such cases were dealt with outside the jurisdiction of the Chinese courts they would be dealt with by the competent courts of His Majesty."

(Article 14 of British treaty is personal status article)

Johnson

(Pages 868 and 869)

The Minister in China (Johnson) to the Secretary of State

Nanking, May 30, 1931--noon.
[Received May 30--11:15 a. m.]

Your 52, May 28, 6 p. m.^{63/}

1. British Minister is still waiting for reaction of his Government to text of article regarding excluded areas as finally agreed upon here and reported to the Department in my May 29, 11 a. m. and as to suggested exchange of unpublished notes whereby both Wang and British Minister agree to accept and sign this as well as other articles subject to approval by both Governments.

2. I shall say nothing to Wang about the matters but shall now await initiative on his part or further instructions from the Department. I agree that in the present posture of Chinese political situation it is probably better for us to pursue quietly course outlined in the Department's 49, May 27, 5 p. m. to Nanking^{62/} leaving question of reserved areas without

^{63/}
Not printed.

^{65/}
Not printed; it reported substance of the conversation covered in memorandum of May 27, 1931, p. 866.

any commitment whatever on our part and awaiting Chinese initiative.

3. Senator Pittman is due in Shanghai on Tuesday June 2nd. I therefore, propose to shift files and staff to the Legation offices, Shanghai, Monday night. Unless otherwise instructed I propose to remain in Shanghai for the month of June. I can at all times reach Nanking in 7 hours by train should necessity arise. And I can easily be at the disposal of Senator Pittman who I believe proposes to spend the month of June in or near Shanghai.

4. British Minister has asked his Government for instructions by Monday June 1st. He hopes to leave Nanking for Peiping, Thursday evening, June 4th.

Johnson

(Pages 869 and 870)

Memorandum by Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs of a Conversation With the Third Secretary of the Chinese Legation (Weigh)

[Washington, 7 June 2, 1931.

Mr. Weigh and Mr. Jacobs met again on the afternoon of June 1, 1931, from 2:30 to 5:30, to continue their re-drafting of the Department's draft of proposals of April 27, 1931, in regard to extraterritoriality.

They completed their work of re-drafting but each party desires to study the re-drafts and within the next couple of days let the other know of any further desirable changes.

As the re-drafts now stand, there are several unfinished and controversial points as follows:

Article II: Special Chambers.

Paragraph 1. The period of years during which the Special Chambers shall function still remains "(Blank)". According to Minister Johnson's telegram of May 29, 11 a. m., paragraph 5, the Sino-British negotiators have agreed upon "five years".

Paragraph 2. The last sentence of this paragraph provides for the hearing in the Special Chambers of cases arising within the jurisdiction of those Chambers involving Americans as plaintiffs or complainants. This provision does not appear in the accords reached by the Sino-British negotiators and Mr. Weigh insists that he is under instructions to have it deleted from our draft. Mr. Jacobs declined to agree to the deletion. Since the British have not secured this provision in their draft it will probably be necessary for us to drop this provision, using it as a trading point in return for some other concession.

Article III: Legal Counselors.

Paragraph 1. The period of years during which the Legal Counselors are to be employed still remains "(Blank)". According to Minister Johnson's telegram of May 29, 11 a. m., paragraph 5, the Sino-British negotiators have agreed upon "five years".

Article XV: Personal Status Matters.

Mr. Weigh insists that we include a reciprocity clause in regard to personal status matters, in spite of the fact that Mr. Jacobs explained to him that, on account of the differences in the laws of our several states, it was impossible for the American Government to grant reciprocity. Mr. Jacobs also pointed out that we were granting reciprocity in regard to forced loans and in regard to the settlement of commercial controversies by arbitration, concerning which matters the British were not prepared to grant reciprocity. These arguments failed, however, to overcome Mr. Weigh's insistence that we must grant reciprocity in regard to these matters.

Article XVI: Non-Discriminatory Treatment.

Mr. Weigh insists that we must add a clause granting general reciprocal treatment for Chinese in the United States. Mr. Jacobs mentioned the same reasons and argument referred to above in the case of personal status matters, but Mr. Weigh stated that he could not accept the Article without a reciprocity clause for Chinese in the United States.

Article XVIII: Reserved Areas.

As this is the principal obstacle in the way of a successful termination of our negotiations, no effort was made to re-draft this Article.

Article XIX: Provisions of Existing Treaties.

Our draft of this Article reads: "Except as superseded or modified by the provisions of the present Treaty, the provisions of existing treaties shall remain in force."

Mr. Weigh insists that this Article read as follows: "The provisions of the existing treaties by the High Contracting Parties which are in conflict with the present Treaty are hereby abrogated."

The latter phraseology is that used by the Sino-British negotiators but is unacceptable to us because we expect to exclude certain areas from the scope of the application of the new Treaty and if conflicting provisions in existing treaties are "abrogated" there may be some confusion about the continuance of the jurisdiction of American courts in the excluded areas.

Article XX: Duration and Ratification.

Paragraph 1. The place where the exchange of ratifications is to take place still remains "(Blank)". We shall have to determine whether it will be Washington or Nanking.

Paragraph 2. The period of the duration of the Treaty still remains "(Blank)". According to Minister Johnson's telegram of May 29, 11 a. m., paragraph 5, the Sino-British negotiators have agreed upon "ten years".

Exchange of Notes:

Mr. Weigh states that the Sino-British negotiators have agreed to include in an Agreed Minute, not for publication, the provision in regard to lawyers not being required to speak the Chinese language and to possess diplomas from Chinese law schools, and in regard to the employment of one British Legal Counselor. We have insisted all along in our draft that there be no "Agreed Minutes", or "unpublished Exchange of Notes": Hence, these provisions in our draft would be published. Mr. Weigh states that according to his instructions the Chinese Government will not agree to this.

Title of Articles:

Mr. Weigh has suggested that, when the final draft is prepared, all titles to Articles, both in the Treaty and in exchange of notes, be deleted. He pointed out that they did not now appear in the Sino-British draft. There is no objection to the deletion of these titles as they have been used all along for the purpose of reference in our exchanges of telegrams with the Minister and with the British Foreign Office.

(Pages 870-872)

Memorandum by the Chief of the Division of Far Eastern Affairs
(Hornbeck) of a Conversation With the Chinese Minister (C. C. Wu)

[Washington,] June 6, 1931.

Dr. Wu referred to the proposal which he had made in his last preceding conversation with Mr. Hornbeck, with regard to the exclusion of a Greater Shanghai area, and that only, from the operation of provisions of the treaty on extraterritoriality, and he wished to know whether Mr. Hornbeck could give him an answer. Mr. Hornbeck said that he would prefer to refrain from discussion of excluded areas until the problems of text, upon which Mr. Jacobs and Mr. Weigh have been working, are disposed of, but that he could say, for the moment, that we adhere to the view which we have all along expressed, that the exclusion of areas at four ports is advisable and desirable; he said that we wish, as from the beginning, to make a treaty which will diminish rather than increase the difficulty of the many problems which are inherent in the great constant problem of contacts in China between foreigners and Chinese.

Dr. Wu said that he had heard "from a reliable source" that the British do not really consider it important to exclude any area other than one at Shanghai and that they are using the other three ports for bargaining purposes. He inquired whether Mr. Hornbeck had been informed on this point. Mr. Hornbeck said that, if such were the case, the British Government would not be likely so to inform either this Government or anybody else and that such a view, if advanced, must be somebody's statement of opinion rather than an authoritative statement upon which reliance could be placed. He said that he could not imagine the British attaching no importance to what happened at Tientsin, Canton and Hankow. He said that we all know that there is such thing as bargaining--even in connection with conceding of points which ought

not to be conceded, but that, quite aside from all such questions, the important thing is: what arrangements may reasonably be expected to improve the situation which is being dealt with? He said that, of all the arguments presented by Dr. Wu in their last conversation, the only one which seemed to him to carry weight in relation to the matter of four rather than one reserved areas was that the Chinese Government would be able to say to the Chinese people, on a basis of one rather than four, that it had scored a greater success in the negotiations. This, however, was a problem largely of how the matter might be presented by the Chinese Government. To him, the facts in the situation support overwhelmingly the opinion that there should be four reserved areas. Reverting to the question of procedure, he would suggest that the points on which Mr. Jacobs and Mr. Weigh have not yet agreed be considered by Dr. Wu, and Dr. Wu's and his efforts be directed toward completion of the text with the exception of the article on reserved areas. Dr. Wu said that this would be agreeable to him.

(Pages 873 and 874)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Shanghai, June 8, 1931--1 p. m.
[Received 10:45 p. m.]

My telegrams of May 24, 9 a. m.; May 26, noon; May 27, 5 p. m.;^{66/}
May 29, 11 a. m.; and May 30, noon.

Lampson informs me confidentially that he met C. T. Wang on June 5 after receiving instructions from home authorizing his signature of the proposed exchange of letters with Dr. Wang, on condition the latter accepted a new version of article 21 of the British draft (I refer to my May 24, 9 a. m.). Acceptance of the British Foreign Office draft of article 21 was refused by Dr. Wang, and Lampson thereupon agreed to some alterations in it to make it acceptable to the Foreign Minister, subject naturally to final approval by both British and Chinese Governments. When this was agreed to, Lampson and Wang signed and exchanged the letters on June 6. Lampson tells me he has no idea as to his Government's reaction concerning the new draft of article 21, now referred to London, but he was unable to obtain all the British Government desired from Wang, while Lampson's action was in any case subject to the ultimate confirmation of both Governments, as the exchanged letters stated.

With the above accomplished, I understand Lampson departed on June 7 at 6 a. m. by airplane from Nanking for Peiping and will not return without such instruction or unless it is possible to sign a treaty.

So far I have not yet received the final drafts of the exchanged letters or of article 21, as accepted by Lampson. As soon as I receive them, they will be communicated to the Department.

Johnson

(Pages 874 and 875)

^{66/} Telegram dated May 27, 5 p. m., not printed.

The Minister in China (Johnson) to the Secretary of State

Shanghai, June 8, 1931--4 p. m.
[Received June 11--9:20 a. m.]

My June 1 8, 1 p. m.

1. Following are texts of letters exchanged and article 21. Please keep confidential.

2. (a) "Nanking 6th June, 1931.

My Dear Doctor Wang: With reference to our recent conversations, I should be glad to receive your confirmation that the draft treaty in 22 articles and preamble and attached documents marked 'A' to 'I', concerning the readjustment of matters relating to jurisdiction over subjects of His Majesty in China, copies of which were exchanged between us today and which I am now referring for confirmation to His Majesty's Government are acceptable to you as they are to me. (Signed) M. W. Lampson."

(b) "Waichiaopu (Ministry of Foreign Affairs). The Republic of China, Nanking, 6th June, 1931.

My Dear Sir Miles Lampson: In reply to your letter of today's date on the subject of the draft treaty in 22 articles, preamble, and attached documents marked 'A' to 'I', relating to jurisdiction reserve over subjects of His Majesty in China, copies of which were exchanged between us today, I have the honor to inform you that the said draft of convention treaty and attached documents are acceptable to me and are being submitted to my Government for confirmation. Sincerely yours. (Signed) Chengting T. Wang."

(c) "Article XXI.

(1) The present treaty shall be binding during a period of 10 years from the date of its coming into force.

(2) Notwithstanding the provisions of paragraph 1 of this article, the provisions of article II of the treaty relating to the Special Chambers to be established by the Chinese Government and those of article III relating to the legal counselors to be appointed by the Chinese Government shall remain in force for such period as the Chinese Government may deem appropriate, not being less than 5 years.

(3) Either of the high contracting parties may demand that on the expiration of the said period of 10 years the provisions of the treaty shall be revised. Notice of such a demand shall be given at least 12 months before the expiration of the said period of 10 years and negotiations shall thereupon be entered into for the purpose of effecting such revision. If no agreement is reached in regard to such revision within this period the treaty shall become null and void.

(4) In case neither of the high contracting parties shall have given notice at least 12 months before the expiration of the period of 10 years of his intention to terminate the treaty, it shall remain in force subject to 12 months notice of termination by either party at any time after the expiry of the first 10 years' period.

67/
Telegram in two sections.

[(d)]. "Article XXII.

(1) The present treaty shall be ratified by the high contracting parties in accordance with their respective constitutional methods.

(2) The ratifications shall be exchanged at Nanking.

(3) The present treaty shall come into force as soon as the ratifications of His Majesty the King of Great Britain, Ireland and the British Dominions Beyond the Seas, Emperor of India, in [apparent omission] of each and all the members of the League of Nations as enumerated in the preamble of the treaty, and of His Excellency the President of the National Government of the Republic of China, shall have been exchanged."

Johnson

(Pages 875 and 876)

The Charge in Great Britain (Atherton) to the Secretary of State

[Paraphrase]

London, June 12, 1931--3 p. m.

[Received June 12--12:05 p. m.]

18/. My 181, June 11, 1 p. m.^{68/} The Foreign Office states that Nelson T. Johnson has been kept informed of Lampson's treaty negotiations, except possibly that C. T. Wang, when he agreed personally to the draft proposal of the Tientsin reservation, was not optimistic at all as to its approval by his Government. Correspondingly, in agreeing personally to a 10-year duration of the treaty, Lampson pointed out specifically his lack of instructions from his Government on this highly mooted point. The Foreign Office views obviously with concern the status of British residents in the case of the treaty safeguards and the Shanghai reservations being contemporaneous.

Atherton

(Pages 876 and 877)

^{68/}

Not printed; it recorded the Lampson-Wang tentative agreement, June 6, on the text of a treaty.

The Minister in China (Johnson) to the Secretary of State

Shanghai, June 13, 1931--11 a. m.

[Received June 13--2:11 a. m.]

I have just received a telegram from Peck at Nanking stating that Minister of Foreign Affairs has sent to him a formal note of which the following is substance:

"Formal note from the Chinese Ministry of Foreign Affairs announces that Minister Wu has resigned, that it is inexpedient that extraterritoriality negotiations be interrupted, and the proposal is made that the negotiations be continued in Nanking between the Chinese Minister for Foreign Affairs and the American Minister with a view to the early termination of the negotiations. Note requests that you inform your Government and send a reply."

[Paraphrase.] Dr. C. T. Wang in a personal note asked Peck to telegraph me to return to Nanking as soon as convenient. From this I assume the Foreign Minister will propose concluding with me an arrangement which is similar to the one with Sir Miles Lampson. I shall wait in Shanghai for the Department's instructions as to what I am to do in the matter. [End paraphrase.]

Johnson

(Page 877)

The Secretary of State to the Consul General at Shanghai
(Cunningham)

[Paraphrase]

Washington, June 16, 1931--5 p. m.

For the Minister: Your June 13, 11 a. m., from Shanghai.

(1) The Department wishes you to telegraph the full text, or important sentences, of C. T. Wang's formal note proposing transfer to Nanking of the negotiations.

(2) With reference to Dr. Wang's request in his personal note to Peck, it is desired by the Department that you go back to Nanking and give Wang a chance to indicate what he has in mind.

(3) Points to guide you: The Department thinks it advisable to proceed slowly in this connection because of diplomatic considerations and in view of the Chinese domestic political and administrative situation. While realizing the probability that we will not be able to conclude a better treaty as to substance than the British, the Department finds the arrangements agreed to between Lampson and Wang to be in their entirety not such as the Department would wish to duplicate. In relation to the American treaty the Department would not wish to have any unpublished notes or agreed minutes. In certain provisions for reciprocity the Department cannot parallel the Lampson-Wang

text. The apparently complicated provisions as to Hankow and Canton are not viewed with favor by the Department, which also feels that at a number of points greater precision is desirable. It is the Department's wish to avoid any move which might allow Dr. Wang to bring pressure to bear upon the British Foreign Office to give its approval hastily. The Department itself does not intend to be rushed. It therefore feels that we should avoid appearing to approve the Wang-Lampson text and should continue to stand aside and to persevere in the course which we have taken during recent weeks. The Department furthermore believes it would be advantageous to all concerned for the treaty discussion at Nanking to be suspended for a few weeks. This would enable you to be absent as you had planned (your June 11, 3 p. m., from Shanghai^{69/}) and would leave C. T. Wang free to concentrate his attention elsewhere.

(4) Hence the Department desires you to say to Dr. Wang that it requests him to instruct the Chinese Legation in Washington to continue its work on the draft with the Department, as Weigh and Jacobs have been doing. It should be explained by you that there are being submitted currently to our law officers the alterations in our drafts as made by Jacobs on the basis of his conferences with Weigh and that the result will be telegraphed you for your consideration when the draft has been completed with exception of the reserved areas. C. T. Wang probably will tell you what he and Lampson have agreed upon ad referendum. You should say to him that you will report to the Department and that, since doubtless some time will be required for consideration at Washington of the whole set-up, you desire to proceed to Peiping for a few weeks and are requesting the Department's permission to do this.

(5) The Department wishes to have your comments on its views expressed in the foregoing and on the remarks made by Dr. Wang when you see him.

Stimson

(Pages 877 and 878)

✓ ✓
Memorandum by the American Minister in China (Johnson) of a Conversation
With the Chinese Minister for Foreign Affairs (C. T. Wang)^{70/}

Shanghai, June 20, 1931.

I saw Dr. Wang today and told him that I had communicated to my Government his letter to me of June 12th^{71/} requesting that negotiations in regard to extraterritoriality be transferred to China and completed here in view of the resignation of the Chinese Minister at Washington. I told him that my Government, in reply to this request, indicated a desire that the

^{70/} Copy transmitted to the Department by the Minister without covering despatch; received July 24. Substance reported by the Minister in his telegram of June 20, 3 p. m., from Shanghai; received June 21, 10:10 a. m. (793.003/736)

^{71/} See supra.

discussions now going on in Washington between Mr. Jacobs and Mr. Wei^{72/} of the Chinese Legation should be permitted to continue until the texts regarding general guarantees had been completed. It was my Government's idea that they would complete discussions of everything except the question of reserved areas and that when the texts had been agreed upon there they would be referred to me for discussion with him. I said I thought that in the meantime I would return to Peiping and come to Shanghai later on to complete this matter with him.

Dr. Wang at first stated that he preferred to have the whole matter brought here but when I explained to him that the Department is referring all matters to the law officers of the Department and that I thought it would save a good deal of time if we could have these matters thrashed out there before referring them out here he stated that he was willing to do this and that he would give the necessary instructions. He asked me when I thought the documents would be here and I told him I thought they would not arrive until the first week in August at the earliest; that I would probably be ready to come down soon after that.

Dr. Wang stated that he wanted to lay all of his cards on the table in regard to the question of reserved areas. He said that the British had first asked for the reservation of Shanghai and Tientsin for a period of ten years, having conceded Hankow and Canton, and that they had ultimately compromised on the question of Shanghai by agreeing that Shanghai should be reserved from Chinese jurisdiction for a period of five years, it being understood that the British and the Chinese might enter into negotiations at any time for the transfer of Shanghai to Chinese jurisdiction, either at the end of the five year period or at any time after the five years had expired and up to ten years; that in case of no agreement Shanghai should be reserved for a period of ten years, then automatically coming under Chinese jurisdiction. As regards Tientsin they had agreed that Tientsin should be transferred to Chinese jurisdiction at the expiration of five years. He said the only reason why the treaty had not been initialled at this time was because of the insistence of the British for the reservation of Tientsin. He said that he had personally agreed to the reservation of Tientsin but he was sure that his Government would not consent. He said he wanted to enter with the American Government, through me, a serious plea that we would not ask for the reservation of Tientsin. He said the reason why the Chinese Government could not consent to the reservation of Tientsin was that it had no international aspect as had Shanghai and that if the Chinese Government consented to its reservation this would leave the door open for the Japanese to demand the reservation of Japanese concessions and the South Manchuria Railway zone, to which the Chinese could never consent.

Dr. Wang also stated that the British, in connection with their agreement, had consented to the taxation of British subjects within the Settlement area at Shanghai on the same basis as the Chinese.

Nelson Trusler Johnson

(Pages 879-881)

^{72/}

i. e., Mr. Weigh.

Memorandum by the American Minister in China (Johnson) of a Conversation
With the Japanese Charge in China (Shigemitsu)^{72/}

Shanghai, June 21, 1931.

In the course of a conversation this evening at the home of Mr. Shigemitsu the latter informed me that only recently he had presented to Dr. Wang an outline of the terms under which Japan would consider the relinquishment of its extraterritorial rights in China. He said that this outline followed generally but vaguely the terms which had been worked out between the United States and the British and the Chinese Governments except as regards the questions of residence and trade in the interior and reserved areas. In regard to the first he stated that the terms outlined by them generally followed the recognized provisions of the ordinary commercial treaty on this subject. As regards reserved areas he stated that his Government had avoided the mention of any specific places but had stipulated for the reservation of international settlements, Japanese concessions, the free area at Tsingtao and the South Manchuria Railway zone. He stated that this document was in the Japanese language, as was always the case with important documents, and that for this reason he was unable to give me a translation.

Nelson Trusler Johnson

(Page 881)

The Minister in China (Johnson) to the Secretary of State

Shanghai, June 21, 1931.

[Received June 23, 1931--10 p. m.]⁷

My June 20, 3 p. m.^{74/} Arnold^{75/} and I are wondering whether it would not be useful to incorporate in the treaty, either in an article or by exchange of notes, some arrangement covering patents and copyrights. As regard copyrights, in recent conversations at the Foreign Office I have found them unwilling apparently to enter into any arrangement which would place our people in China upon a basis similar to that enjoyed by Chinese in the United States. The situation of course is that any denial by us of rights to Chinese in the United States would have like effect on Chinese. Prodigious demand in China for American text and reference books is so great that it profits Chinese to continue present practice of pirating. Linked with extraterritorial negotiations something might be accomplished. Similar situation exists in regard to patents. There is I understand at present a domestic law protecting Chinese patents but under impetus of encouragement of domestic industries infringement of foreign patent rights is condoned.

Johnson

(Pages 881 and 882)

^{73/} Copy transmitted to the Department by the Minister without covering despatch; received July 24. Substance reported by the Minister in pars. 1 and 2 of his telegram of June 23, 1 p. m., from Shanghai, p. 882.

^{74/} See footnote 70, p. 879.

^{75/} Julean Arnold, Commercial Attache in China.

(A) The complete text of the letter worked out by the British with
The Minister in China (Johnson) to the Secretary of State
[Paraphrase]
Shanghai, June 23, 1931--1 p. m.
[Received June 23--5:20 a. m.]

Here follows report of conversation based on the Minister's memo-
randum dated June 21, 1931, printed on page 881.
(3) From my conversations with the Japanese Charge, I am of the
opinion that his Government will be unyielding insofar as Manchuria is con-
cerned in regard to what is considered to be Japan's position there as
legitimized by the treaties of 1915. Once Shigemitsu stated to me that if
only China south of the Great Wall were concerned, this would not be so diffi-
cult a matter to solve.

(Pages 882 and 883)
I personally believe the reservation of areas by treaty, as
immediately agreed to now, offers little by the way of protection to the
foreign business interests with agencies beyond Shanghai and Tientsin. Once
extrajurisdiction is gone outside those areas, the Chinese can always use
such agencies outside the reserved areas. There is some argument in favor
of reserving Shanghai in order to provide a breathing spell during which
there can be reached arrangements to transfer the International Settlement
to Chinese jurisdiction, but I feel Tientsin's reservation to be of doubtful
value in the long run.

The Minister in China (Johnson) to the Secretary of State
[Paraphrase]
Shanghai, June 24, 1931--4 p. m.
[Received June 25--12:59 p. m.]

Department's June 16, 5 p. m., and June 22, 6 p. m.

(1) I told C. T. Wang that I expected to return to Peiping, and he
replied he would take advantage of this to have a short holiday himself. He
expressed the hope that documents might be received before long from
Washington, allowing negotiations to be completed here.

(2) Respecting the Department's views in its June 16, 5 p. m.,
paragraph (3), I see no reason why at this time we should be rushed. The
Chinese Government is in a life-and-death struggle with the Communists and
radical groups which now control Kiangsi Province, and I think this will last
all summer. If the Government emerges successfully, it will naturally be in
a stronger position than hitherto and probably less conciliatory in its mood.
If it should fail, I do not see any prospect of a Government as strong, with
the grave danger that its failure would be followed by chaos.

(3) The British negotiations in any case have set the line for us
to follow.

77/
Signed at Peking, May 25, 1915, Foreign Relations, 1915, pp. 171-177.

Shanghai, June 23, 1931--1 p. m.
[Received June 23--5:20 a. m.]

(3) From my conversations with the Japanese Charge, I am of the opinion that his Government will be unyielding insofar as Manchuria is concerned in regard to what is considered to be Japan's position there as legitimized by the treaties of 1915. Once Shigemitsu stated to me that if only China south of the Great Wall were concerned, this would not be so difficult a matter to solve.

(Pages 882 and 883)

(b) I personally believe the reservation of areas by treaty, as tentatively agreed to now, offers little by the way of protection to the foreign business interests with agencies beyond Shanghai and Tientsin. Once extrajurisdictionality is gone outside those areas, the Chinese can always use such agencies outside the reserved areas. There is some argument in favor of reserving Shanghai in order to provide a breathing spell during which there can be reached arrangements to transfer the International Settlement to Chinese jurisdiction, but I feel Tientsin's reservation to be of doubtful value to us.

Shanghai, June 24, 1931--4 p. m.
Received June 25--12:59 p. m.

(1) I told C. T. Wang that I expected to return to Peiping, and he replied he would take advantage of this to have a short holiday himself. He expressed the hope that documents might be received before long from Washington, allowing negotiations to be completed here.

(3) The British negotiations in any case have set the line for us to follow.

77/ Signed at Peking, May 25, 1915, Foreign Relations, 1915, pp. 171-177.

(4) The complete text of the terms worked out by the British with Dr. Wang is now before the Department. The parts which are to be unpublished are those the Chinese would not agree to include in the published treaty, chiefly for the reason that they were deemed to be derogatory to China's dignity as a nation. Having these texts in hand, the Department can work out with the Chinese Legation a draft and express its views on the text and the terms, to be sent me for final discussion with Dr. Wang.

(5) Regarding the reserved areas, C. T. Wang has been adamant all along. I believe Lampson did his best in this regard, nor have I reason to doubt the sincerity of the reasoning Dr. Wang used with me in stating his attitude regarding Tientsin. In this connection I refer you to my June 23, 1 a. m. /p. m./ on the Japanese terms. Wang argued that he could oppose the placing of Japanese Concessions and their railway zone in the category of Shanghai because the latter was international, while the former pertain only to one nation. Therefore, it is apparent that when the reserved areas come up we will find the Chinese unwilling to accept even the 5-year period as tentatively agreed to by Lampson and Wang.

(6) I personally believe the reservation of areas by treaty, as tentatively agreed to now, offers little by the way of protection to the larger business interests with agencies beyond Shanghai and Tientsin. Once extraterritoriality is gone outside those areas, the Chinese can always sue such companies outside the reserved areas. There is some argument in favor of reserving Shanghai in order to provide a breathing spell during which there can be reached arrangements to transfer the International Settlement to Chinese jurisdiction, but I feel Tientsin's reservation to be of doubtful value to us.

(7) My arrangement with C. T. Wang is for me to go north for a few weeks, to await there receipt from the Department of all documents agreed to tentatively in Washington, and then to bring them to Nanking for final discussion and agreement. I understand Lampson expects to come south, perhaps early in September, for a final settlement of the Chinese-British treaty.

Johnson

(Pages 883 and 884)

The Minister in China. (Johnson) to the Acting Secretary of State

[Paraphrase]

Peking, June 30, 1931--4 p. m.

[Received June 30--8:45 a. m.]

379. My May 26, noon, from Nanking.

(1) Lampson informed me today of his Government's general approval of all he had done in the extraterritoriality negotiations at Nanking except for article 16. He is still awaiting his Government's reaction on this question.

(2) He informs me that the British Foreign Secretary will have to make a statement in the House of Commons during the present week regarding the extraterritorial negotiations. The statement is likely to be general in character, with a vague reference to the question of reserved areas. In all probability it will put responsibility for the pause in negotiations upon the Chinese political situation, with specific reference to the Canton crisis.

Johnson

(Pages 885 and 886)

Memorandum by Mr. Joseph E. Jacobs of the Division of Far Eastern Affairs

Mr. Jacobs informed Mr. Weigh on July 2, 1931, at Washington, D.C. Mr. Weigh, Third Secretary of the Chinese Legation, called this morning to discuss with Mr. Jacobs Article XIV--Personal Status Matters, and Article XVIII--Non-discriminatory Treatment, as drafted by them on June 26 and June 27, 1931. Mr. Weigh stated that he had received further instructions from his Government in regard to these two Articles.

With regard to Article XIV-- Personal Status Matters, Mr. Weigh insisted that a provision be inserted giving Chinese in the United States reciprocal treatment and suggested an additional paragraph to Article XIV as follows:

"Reciprocally, the applicable laws of China relating to matters of personal status as mentioned in the first paragraph of this Article, in so far as they are substantially the same as similar laws of the United States of America or of its territorial possessions, will be applied by the courts of the United States of America or of its territorial possessions as regards nationals of China and the treatment accorded to nationals of the United States of America or their estates or personal effects as provided in the second, third and fourth paragraphs of this Article shall apply also to nationals of China or their estates or personal effects in the United States of America or in its territorial possessions."

Mr. Jacobs explained to Mr. Weigh, as he had done on several previous occasions, that the enactment of laws in the United States in regard to personal status matters was a State and not a Federal right and remarked that it would serve no useful purpose to incorporate in the proposed new Treaty a provision which we could not enforce and which would thus become a source of friction in the future.

With regard to Article XVIII, concerning which an effort had been made in the draft prepared by Mr. Weigh and Mr. Jacobs on June 26 and June 27 to provide as much non-discriminatory treatment for Chinese citizens in the United States as is possible, Mr. Weigh stated that the paragraph which we had drafted with this object in view was unacceptable. He stated that his Government wanted complete non-discriminatory treatment. The paragraph to which Mr. Weigh objected is as follows:

"Reciprocally, in all matters for which the present Treaty provides, nationals of China shall be accorded in the United States of America or in its territorial possessions treatment in no way discriminatory as compared with the treatment accorded to the national of any other country in so far as such treatment is not in conflict with applicable laws."

Mr. Jacobs again explained to Mr. Weigh, as he did in regard to Article XIV that it was not possible for us to grant complete non-discriminatory treatment in regard to all matters dealt with in the proposed new Treaty. Mr. Jacobs pointed out to Mr. Weigh the fact that our draft was already more liberal than the British draft in that it granted complete reciprocity of treatment in regard to the settlement of commercial disputes by arbitration (Article VII) and in regard to the question of military service and forced loans (Article X).

Apparently, however, Mr. Weigh was under strict instructions from his Government not to yield on these points as he repeatedly stated that he could not concur in any draft which did not provide complete reciprocal and non-discriminatory treatment for China.

Mr. Jacobs informed Mr. Weigh that he would again consult the Department's legal advisers. In making his remarks to Mr. Weigh in regard to the above matters, Mr. Jacobs had in mind the views of Mr. Ward of the Legal Adviser's Office.

(Pages 886 and 887)

The Acting Secretary of State to the Minister in China (Johnson)

No. 536

Washington, July 6, 1931.

Sir: Referring to your telegrams of June 20, 1931, 3 p. m.^{79/} and of June 24, 1931, 4 p. m., from Shanghai, in regard to the extraterritoriality negotiations between the United States and China, the Department is sending you herewith a copy of a draft which has been prepared in consultation between representatives of the Department and of the Chinese Legation,^{80/} together with copies of memoranda, dated June 27, 1931,^{81/} and July 2, 1931,^{82/} prepared by the Department's representative in regard thereto.

^{79/} See footnote 70, p. 879.

^{80/}

Draft not printed; for draft revised as of July 14, see p. 893.

^{81/}

Ante, p. 884.

^{82/}

Supra.

2281. 1. The Department is mailing to the Embassy at London a memorandum^{86/} in regard to the proposed new Treaty relating to the extraterritorial rights of the United States in China, together with the text of the draft of this Agreement and of the exchange of notes relating thereto which the Department has under consideration. Pertinent excerpts from this memorandum are as follows:

86/
Sent under date of July 14, 1931, as enclosure to instruction No. 852 (793.003/756c).

The Department of State has prepared a draft of Article XVI and of an exchange of notes in regard thereto, copies of which are attached hereto, which the Department prefers to the Sino-British draft and which it proposes to submit to the American Minister to China with instructions that the Minister endeavor to obtain the assent of the Chinese Minister for Foreign Affairs to this draft.

While both the Sino-British draft of Article XVI and the Department's draft of this Article as referred to above provide for the reservation of an area at Tientsin during a period of 5 years, the Department would be prepared, as a last resort, to give up this reservation in exchange for the assent of the Chinese authorities to that portion of the Department's draft of Article XVI relating to the reserved area at Shanghai. The Department believes, however, that authorization to make this concession should not be given to the American and British negotiators in China until they have exhausted every effort to obtain a reservation in regard to Tientsin.

The Department's draft of Article XVI provides that negotiations for the conclusion of an agreement to alter the status of the reserved area at Shanghai may be entered into at the expiration of 9 years. This period has been chosen because it synchronizes with the 12 months' notice period provided in Article XII of the proposed Treaty in regard to the period of duration.

The Department of State realizes, particularly in view of the draft which the British Minister and the Chinese Minister for Foreign Affairs have initialed, that the Chinese Government will probably make every effort to oppose the provisions of the Department's draft of Article XVI which seek to reserve the Shanghai area for an indefinite period, depending upon the coming into force of a mutually satisfactory agreement in regard to the questions involved at Shanghai, and that the Chinese Government will probably oppose any attempt to reserve an area at Tientsin. The Department is of the opinion, however, that an effort should be made to obtain these reservations substantially in the form provided in the Department's draft. It is believed that if the Chinese Government is made to realize that the American and British Governments insist upon satisfactory arrangements in regard to Shanghai, the Chinese Government, in the last resort, will not because of their objection to this forego the opportunity to conclude a Treaty which will give them complete jurisdiction in all other parts of China.

The Department of State has been led to believe that the views of the British Foreign Office are substantially in accord with those of the Department as outlined above. The Department would, however, appreciate receiving the comments and suggestions of the Foreign Office with a view to the issuance to the American Minister and to the British Minister to China of instructions that, upon their return to Peking, they endeavor to obtain the assent of the Chinese authorities to provisions substantially along the lines proposed in the Department's draft of Article XVI and exchange of notes in regard thereto.

2. The texts of the Department's draft of Article XVI and of the exchange of notes in regard thereto are as follows:

"Until the coming into force of a separate agreement to be concluded between the United States of America and China as hereinafter provided, the provisions of the present Treaty shall not be applicable within the area of Greater Shanghai, as shown on the map annexed hereto, to nationals of the United States of America, who, within that area, shall continue to be subject to the jurisdiction and laws of the United States of America and entitled to all rights and privileges accorded by the treaties concluded between the United States of America and China. Negotiations for the conclusion of an agreement to alter the status of nationals of the United States of America in the area of Greater Shanghai referred to above shall, upon request by the Government of China, be entered into at any time after the expiration of 9 years from the coming into force of the present Treaty.

Until the expiration of 5 years from the date of the coming into force of the present Treaty, the provisions of the present Treaty shall not be applicable within the area at Tientsin, as shown on the map annexed hereto, to nationals of the United States of America. Pending the application of the present Treaty within this area at Tientsin, nationals of the United States of America within that area shall continue to be subject to the jurisdiction and laws of the United States of America and entitled to all rights and privileges accorded by the treaties concluded between the United States of America and China.

Notwithstanding the provisions of the two preceding paragraphs, nationals of the United States of America resident in the areas of Greater Shanghai and Tientsin, as shown on the maps referred to herein, shall, from the coming into force of the present Treaty, be subject to taxation by the Chinese Government in accordance with Article VI of the present Treaty; provided, that such taxation shall not discriminate in any way against nationals of the United States of America as compared with Chinese citizens and/or the nationals of any other country."

"Excellency: With reference to Article XVI of the Treaty concluded between the United States of America and the Republic of China, I have the honor to inform Your Excellency that the Government of the United States of America is prepared to support immediate negotiations for a solution of the question of the extra-Settlement roads at Shanghai subject to satisfactory arrangements being made in regard to the policing and maintenance of the said roads and the payment of rates and provisions for municipal services in the areas in question.

I have the honor to request Your Excellency's confirmation of my understanding that, under the provisions of Article XVIII of the present Treaty, nationals of the United States of America in any of the areas in China in which Chinese administrative jurisdiction does not at present apply shall enjoy such exemptions from Chinese jurisdiction as may be enjoyed by nationals of any country.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration. (signed) American Representative."

"Excellency: I have the honor to acknowledge the receipt of Your Excellency's note of today's date referring to the Treaty concluded today between the Republic of China and the United States of America in which you request my confirmation of your understanding as follows:

(Note to be quoted)

I hereby confirm your understanding quoted above as correct.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration. (signed) Chinese Representative."

3. The above texts are being telegraphed to you in order that you may inform the British Minister when the Department assumes the British Foreign Office will consult before replying to the Department's memorandum.

Castle
(Pages 890-893)

Draft of a Treaty Between China and the United States of America,
Revised as of July 14, 1921

(Tentative and without commitment)

PREAMBLE

The United States of America and the Republic of China, being animated by the desire further to strengthen the bonds of friendship happily existing between them, have resolved to conclude a Treaty for the purpose of readjusting matters relating to jurisdiction in China over nationals of the United States of America, and have appointed as their Plenipotentiaries, that is to say:

The President of the United States of America,
.....
The President of the National Government of the Republic of China,
.....
who, having duly exchanged their full powers which have been found to be in good and proper form, have agreed as follows:

Article I: Transfer of Jurisdiction

Except as otherwise provided by the present Treaty, nationals of the United States of America shall in China be entitled to the protection, and shall be subject to the jurisdiction, of the Chinese courts, but they shall, under all circumstances, be amenable only to the jurisdiction of the Chinese Modern Courts of Justice (Fa Yuan) and to the duly promulgated laws, ordinances and regulations of the Central, Provincial and Municipal Governments of China.

In cases of offenses under the Police Offenses Code or under Municipal Regulations, nationals of the United States of America shall in China be subject to the jurisdiction of the Police Courts, but in such cases the penalty imposed by the court shall not exceed a fine of fifteen Yuan or, in the event of such fine not being paid, detention at the rate of one day's detention for each Yuan of the fine imposed up to a maximum of fifteen days.

Article II: Special Chambers

A Special Chamber shall be established, for such period as the Chinese Government may deem appropriate, not less than five years, in each of the District Courts (Ti Fang Fa Yuan) in Harbin, Shenyang (Mukden), Tientsin, Shanghai, Hangkow, Chungking, Canton, Kunming (Yunnanfu), Tsingtao and Foochow and in each of the High Courts (Kao Teng Fa Yuan) having appellate jurisdiction respectively over such courts.

All cases involving nationals of the United States of America as defendants or accused shall in China be tried only before the Special Chambers most accessible to the court within whose jurisdiction the cases originate, except: (1) those on final appeal in the Supreme Court of China; (2) those in which nationals of the United States of America concerned may elect in writing to submit themselves to the jurisdiction of the nearest Modern Court of Justice (Fa Yuan) to which no Special Chamber is attached; and (3) those which fall within the jurisdiction of the Police Courts of China as provided in Article I of the present Treaty.

Article III: Legal Counselors

The Government of China agrees to take into its service for such period as it may deem appropriate, not less than five years, such number of Legal Counselors as it may consider necessary, who shall be selected and appointed as officials of China from among foreign legal experts of high moral character who possess the training, qualifications and practical experience necessary for appointment to judicial offices, and who shall be attached to the Special Chambers. Their names will be communicated by the Government of China to the Government of the United States of America.

The Legal Counselors shall remain in office at the pleasure of the Chinese Government unless dismissed for cause duly shown, and they shall otherwise receive the consideration and respect due to the dignity of their office.

A Legal Counselor need not permanently reside at the place in which the Special Chamber of the court to which he is assigned is established and there shall be a flexible and a practicable system of administration of assignments in order to ensure efficiency in the use of the services of the Legal Counselors.

The Legal Counselors shall serve under the Ministry of Justice and shall be deputed by the Minister of Justice to be present during hearings before the procurator, judge or judges of the Special Chambers of the District or High Courts in all cases involving nationals of the United States of America as defendants or accused. It shall be the duty of the Legal Counselors in those cases to observe the workings of the Special Chambers. They shall be given access to the files of the proceedings and may present their views in writing to the procurator, judge or judges who shall give due consideration to the views thus expressed. Adequate arrangements shall be made for interpreting in order to enable the Legal Counselors to follow and to observe the proceedings in court. The Legal Counselors shall forward to the Minister of Justice such reports as they may consider necessary and copies of those reports shall upon request be immediately furnished by the Legal Counselors to the Minister of the United States of America in China.

In addition, the Legal Counselors shall be authorized to receive directly, from any of the interested parties to an action in any Chinese court involving nationals of the United States of America, or from their counsel, observations in regard to the administration of justice, the execution of judgments, or the manner of the application of laws, and, at the request of the interested parties, shall bring such observations to the notice of the Minister of Justice with a view to ensuring the observance of Chinese laws. Copies of such observations shall likewise be furnished by the Legal Counselors to the Minister of the United States of America in China upon request.

Similarly, the Legal Counselors shall be authorized to receive such observations or complaints as may be caused by domiciliary visits, expropriations, requisitions, arrests, bail, detention and imprisonment, which observations or complaints shall be dealt with in like manner. Immediately following any domiciliary visit, search or arrest directly affecting nationals of the United States of America in any judicial district, the local authorities shall notify the Legal Counselor most accessible in point of time.

When nationals of the United States of America, involved as defendants or accused, are tried before the Special Chambers of the District or High Courts, judgment shall be reserved until the foreign Legal Counselor shall have made, within three days after the conclusion of the trial, such observations, as he may desire to the procurator, judge or judges. In the event of these officers failing to give these observations due consideration, execution of the judgment will be suspended until the observations of the Legal Counselor shall have been considered by the Ministry of Justice which will take such action as it deems necessary in the interests of justice.

Any of the Chinese courts referred to in Article II may begin to exercise jurisdiction over nationals of the United States of America when the Special Chambers therein provided for shall have been organized and the Legal Counselors shall have been appointed and installed in office as provided in this Article.

Article IV: Lawyers and Interpreters

Nationals of the United States of America appearing before Chinese courts may employ duly qualified lawyers of Chinese or American or any other foreign nationality, registered as such with the Chinese Government, and such lawyers, if of American or other foreign nationality, shall have the same rights and privileges as Chinese lawyers appearing before the court, and shall be subject, in all respects, to the same laws and regulations which govern Chinese lawyers. Nationals of the United States of America may also be entitled to employ duly qualified interpreters of whatever nationality.

Hearings shall be in the Chinese language but the court shall take measures to ensure an understanding of the proceedings by all parties and have the assistance of competent interpreters if necessary.

Nationals of the United States of America, parties to a suit or persons authorized by them may, upon payment of the usual official fees, obtain certified copies of the evidence and judgment in such suit, and arrangements will, if necessary and where possible, be made for supplying on application and on payment of the appropriate fees translations of such documents.

In all judicial proceedings in which nationals of the United States of America are summoned to appear as parties or witnesses, and in all court processes directly concerning such nationals, their names will, in order to avoid mistake and misunderstanding, be added in English to the Chinese texts of the summonses, orders, or other court processes.

Article V: Arrests, Imprisonment, Detention and Bail

Except in cases flagrante delicto, nationals of the United States of America shall only be arrested, detained or imprisoned upon orders formally issued by a Modern Court of Justice specifically stating the legal grounds on which and the offense for which action is authorized. They shall, within twenty-four hours after arrest, exclusive of legal holidays, be brought for hearing before the nearest Modern Court of Justice competent to deal with the case. If there is no such Modern Court of Justice which can be reached in that space of time, nationals of the United States of America thus arrested shall be brought, with the least possible delay, before the nearest competent Modern Court of Justice.

Nationals of the United States of America under detention or under sentence of imprisonment shall only be detained or imprisoned in modern detention houses or modern prisons or in other premises suitable for their detention or imprisonment, provided that those under sentence of imprisonment for a term of five or more years shall be imprisoned only in modern prisons situated at places where Special Chambers are established.

Nationals of the United States of America arrested, detained or imprisoned shall be permitted to communicate with the nearest consular officer of the United States of America, and they shall be afforded all possible facilities to that end. Consular Officers of the United States of America or their representatives shall be permitted to visit nationals of the United States of America under arrest, detention or imprisonment at all reasonable times.

If a national of the United States of America charged with any offense, the maximum penalty for which does not exceed (1) imprisonment for six months or (2) imprisonment for one year, makes application before sentence is pronounced for the imposition of a fine instead of imprisonment, the court shall grant such application. The amount of the fine imposed shall be in accordance with the provisions of Chinese law, if such provisions exist, but in no case shall it exceed in the case of (1) a maximum of one thousand Yuan and in the case of (2) three thousand Yuan.

Unless the court has reasonable and good grounds to believe that nationals of the United States of America who may be arrested or detained will flee from justice if application for bail be granted, such nationals shall be granted immediate release on bail upon application therefor, except when such nationals have been duly charged according to law with the commission of a crime or crimes punishable by death or imprisonment for life, in which cases bail may be granted or denied in the discretion of the court. The amount of bail shall be reasonably proportionate to the offense alleged. Such facilities for release on bail shall be granted to appellants until the sentence of the final Appellate Court is given.

Nationals of the United States of America shall not be subject to imprisonment for debt. If, however, it is shown that a debtor is taking action which will render execution on his goods in China impossible, or if execution cannot be safeguarded by any other means, he may be detained in the manner provided for such cases by Chinese law, in which case the provisions of the second and third paragraphs of this Article shall apply.

Except in such cases as must in accordance with Chinese law be heard in camera, all hearings of cases involving nationals of the United States of America shall be open to the public.

Article VI: Taxation

Nationals of the United States of America shall be liable for the payment of such non-discriminatory Chinese taxation as may be actually paid by all nationals of China who are liable therefor and as may be authorized under legally enacted and duly promulgated laws, ordinances and regulations of the Central, Provincial and Municipal Governments of China.

Nationals of the United States of America shall be protected against taxation without legal sanction and against irregular or discriminatory methods of assessing or levying taxation, and such legal taxation as is properly payable by nationals of the United States of America shall be enforced against them by no other process than that of action in the competent Chinese Modern Courts of Justice.

Municipal taxation shall be imposed upon nationals of the United States of America only in accordance with duly authorized municipal regulations sanctioned by the Central or Provincial Government of China. The proceeds of such municipal taxation shall in general only be expended on relevant purposes within the municipal area in question.

No methods of assessing liability to taxation shall be employed except those prescribed by duly promulgated laws, ordinances and regulations of China. In cases of disputed assessment, the party or parties concerned shall be entitled to have their liability and the amount thereof determined by the nearest Modern Court of Justice.

Tax agreements entered into with nationals of the United States of America in their several capacities as individuals, companies, firms, or partnerships shall be duly respected.

Article VII: Arbitration

The Chinese Courts of Justice shall recognize and, if necessary, enforce the performance of agreements wherever entered into by nationals of the United States of America between one another, or with other foreign nationals, or with nationals of China, for the settlement of civil or commercial controversies by arbitration. The arbitrators selected by the parties in accordance with such agreements may be of any nationality.

The arbitration shall be conducted in accordance with the procedure established in the jurisdiction where the arbitrators meet.

The Chinese Courts of Justice shall not entertain any application or claim the subject matter of which falls within the scope of such an agreement for arbitration, but will enforce awards made in pursuance thereof, unless the award is contrary to public order or good morals or is vitiated on other grounds recognized by the general principles of law as understood in modern jurisprudence.

The above provisions shall apply reciprocally to agreements for arbitration entered into by nationals of China and the enforcement of awards made in pursuance thereof by the United States Courts.

Article VIII: Rights in Immovable Property

All rights in immovable property in China held by nationals of the United States of America shall, subject to the exercise of the right of eminent domain by the Chinese Government, be recognized as valid and remain undisturbed.

The property in China, movable or immovable, of nationals of the United States of America shall not be expropriated or requisitioned except for reasons of public interest recognized by law as such and only after adequate compensation has been paid. Any dispute regarding the amount of compensation to be paid shall be determined by reference to the competent administrative organ or the nearest Modern Court of Justice at the option of the nationals of the United States of America concerned.

Article IX: Search of Premises

The public buildings and private residences in China of nationals of the United States of America, and their warehouses, business premises and factories, together with accessory articles and properties, shall be respected and shall not be subjected to any occupation, search or inspection; and the books and correspondence relating to their commercial transactions shall not be examined except as specifically provided for in non-discriminatory legislation, legally enacted and duly promulgated. Premises in China occupied by nationals of the United States of America shall not be forcibly entered except (1) upon warrants formally issued by the Modern Courts of Justice, stating the legal grounds on which action is authorized, or (2) in cases flagrante delicto.

Article X: Military Service and Forced Loans

Nationals of the United States of America in China shall not be subject to any form of military service, or to any tax or levy imposed as substitute for military service, or to military requisitions or contributions of any kind, nor shall they, directly or indirectly, be liable to or be compelled to subscribe to public loans or any other form of forced levy. Reciprocally, nationals of China shall enjoy in the United States of America similar exemptions in relation to all of the above matters.

Article XI: Shipping

Commercial vessels of nationals of the United States of America in Chinese ports or waters shall comply with such non-discriminatory and legally enacted and duly promulgated Chinese regulations as are applicable to all commercial vessels. They shall not be subject to any form of commandeering or requisition, nor shall they be compelled to carry Chinese troops or Chinese military supplies. Such vessels shall not be inspected, searched, boarded, or subjected to any kind of restraint by Chinese military forces except in the case of special emergency and only after due notification to and by arrangement with the captain or with the officer in charge of the vessel. They may not be boarded by Chinese police nor may any person be arrested on board any such vessel except upon a warrant formally issued by a Modern Court of Justice specifically stating the legal grounds on which action is authorized. In the absence of such a warrant, Chinese police may only board the vessel in case of special emergency and only after due notification to and by arrangement with the captain or with the officer in charge of the vessel.

In general the treatment accorded to commercial vessels of nationals of the United States of America shall be in conformity with that accorded under recognized international practice by maritime nations to vessels of other countries in their ports or waters. The present authority of the Chinese Maritime Customs with respect to commercial vessels of nationals of the United States of America, including authority to search such vessels for the prevention of fraud or smuggling, shall remain unimpaired.

Article XII: Companies

Companies, firms, partnerships, corporations or philanthropic institutions incorporated or organized in accordance with applicable federal or state laws of the United States of America or of its territorial possessions and operating in China shall, provided they comply with Chinese laws relating to registration of such organizations, be entitled to all the rights and privileges enjoyed by nationals of the United States of America under the present Treaty. Such companies, firms, partnerships, corporations or philanthropic institutions, and their branches, agencies or representatives shall not be subject to discriminatory treatment, and, as regards national, provincial and municipal taxation, shall only be taxed in proportion to the amount of capital actually employed in China, in the province, or in the municipality, respectively, or in respect of profits and revenues which they have actually earned in China, in the province, or in the municipality, respectively.

Reciprocally, companies, firms, partnerships, corporations or philanthropic institutions incorporated or organized in accordance with applicable laws of China and operating in the United States of America shall enjoy, with regard to taxation and the right to carry on trade and access to the courts, treatment not less favorable than that enjoyed by companies, firms, partnerships, corporations or philanthropic institutions of the most-favored foreign country.

Article XIII: Pending Cases

Cases terminated in the courts of the United States of America in China prior to the coming into force of the present Treaty shall not be reopened, and all final judgments or decisions rendered in such cases shall, if necessary, be executed in any part of China by the Chinese judicial authorities.

Cases pending before the courts of the United States of America in China at the time of the coming into force of the present Treaty shall continue until judgment is pronounced in the said courts, the jurisdiction of which shall remain in full force for this purpose; and the Chinese authorities shall lend any assistance requested by the authorities of the United States of America in this connection. Such cases shall be disposed of and wound up within a period of six months from the date of the coming into force of the present Treaty, upon the expiration of which period all cases still pending shall either be dismissed or be turned over for adjudication to the Chinese courts which would otherwise have jurisdiction under the provisions of the present Treaty.

It is understood that after the coming into force of the present Treaty, no action against nationals of the United States of America shall be entertained by the competent Chinese courts in respect of acts which took place prior to that date, for which they were not liable according to the laws of the United States of America but for which they might be liable according to the laws of China.

Article XIV: Personal Status Matters

In all matters of personal status, among which are included all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction, and in all matters relating to succession, whether by will or on intestacy, and to the distribution and winding up of estates and family law in general, the applicable laws of the United States of America shall be applied by the Chinese courts as regards nationals of the United States of America in China.

All such cases of personal status where only nationals of the United States of America are concerned shall at the option of the parties concerned be dealt with outside the jurisdiction of the Chinese courts.

Consular officers of the United States of America shall take temporary possession of the estates in China of deceased nationals of the United States of America. They shall administer the same in all cases where no objection to such administration has been filed by an interested party in writing at a consular office of the United States of America in China within ninety days after notice of death has been published by the competent consular office. Where such objection is defended, the provisions of paragraphs one or two, as the case may be, shall apply. In cases of intestacy where there is no kin the immovable property of the deceased shall be disposed of in accordance with the laws of China.

IV. The personal effects left behind by nationals of the United States of America who die on the high seas or when passing through China without having there any regular domicile or permanent residence shall be handed over to or be taken possession of by the nearest consular representative of the United States of America, who shall be entitled to dispose of the same in accordance with the laws of the United States of America without any interference by the Chinese authorities.

Article XV: Rights of Residence and Trade

The existing rights enjoyed in China by nationals of the United States of America to travel, to reside, to establish firms, to open branches, to acquire or lease property, and to work or engage in industry or trade, shall remain unimpaired.

Article XVI: Excluded Areas

(Blank)

Article XVII: Definition of the Expressions--"Nationals of the United States of America" and "Nationals of China"

The expression "nationals of the United States of America" used in the present Treaty shall be deemed to include both citizens of the United States of America and citizens of its territorial possessions; and likewise the expression "nationals of China" shall be deemed to include both citizens of China and citizens of its territorial possessions.

Article XVIII: Non-Discriminatory Treatment

In all matters for which provision is made in the present Treaty, nationals of the United States of America shall be accorded in China treatment in no way discriminatory as compared with the treatment accorded to the nationals of any other country in China.

Article XIX: Provisions of Existing Treaties

Except as otherwise provided in the present Treaty, the provisions of existing treaties between the High Contracting Parties which are superseded by the provisions of the present Treaty are hereby abrogated.

Article XX: Authorized Text

The present Treaty has been drawn up in the Chinese and English languages, and these two texts shall have equal force. There shall be prepared as soon as possible a French text on which the High Contracting Parties shall agree, and this text when accepted shall, in case of dispute between the Chinese and the English texts, be authoritative.

Article XXI: Duration

Except as otherwise provided in Articles II, III and XVI, the present Treaty shall be binding for a period of ten years from the date of its coming into force. Either of the High Contracting Parties may within twelve months before the expiration of the said period of ten years demand that the provisions of the present Treaty be revised and/or extended. Negotiations shall thereupon be entered into for the purpose of effecting such revision and/or extension. If within this period of twelve months no agreement is reached in regard to such revision and/or extension, the present Treaty shall become upon its expiration null and void.

Article XXII: Ratification

The present Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods.

The ratifications shall be exchanged at

The present Treaty shall come into force as soon as the ratifications shall have been exchanged.

In faith, whereof, the Plenipotentiaries named in the Preamble have signed the present Treaty and affixed thereto their seals.

Done at the day of month of the year of the Republic of China; corresponding to the day of, 1931.

(Signed) American Representative
(Signed) Chinese Representative

DECLARATION

With reference to the Treaty concluded today between the Republic of China and the United States of America, I have the honor to declare on behalf of my Government as follows:

1. Protection of the Courts: The Chinese courts will ensure to the persons and property of nationals of the United States of America in China due protection in accordance with international law and the general practice of nations.

2. Personnel of the Special Chambers: The President of the court to which a Special Chamber is attached will be concurrently the chief judge of that Special Chamber, and the other judge or judges of the Special Chamber as well as its procurator or procurators will be legal scholars with a broad knowledge of the general concepts of modern jurisprudence and with practical legal or judicial experience. Their names, ranks, and salaries, will be made known to the public, and they will not be removed from office without cause.

3. Legal Counselors: The Legal Counselors will be engaged and employed by the Chinese Government under contracts specifying in detail the duration and the terms of their service, including in the case of each foreign Legal Counselor total annual emoluments of not less than dollars fourteen thousand five hundred United States currency, to be paid in quarterly instalments, the said quarterly instalments to be deposited in such bank or banks as the Legal Counselor concerned may indicate six months in advance of the date when such instalments fall due.

Among the corps of Legal Counselors, there will also be included one Legal Counselor of Chinese nationality who will be similarly selected and appointed from among Chinese legal experts possessing similar training, qualifications, and experience and will have the same functions as the foreign Legal Counselors.

4. Publication of Codes: The work of compiling the modern Chinese codes and laws has now been completed and a copy of the Ssu Fa Li Kuei of the National Government issued by the Judicial Yuan which contains the texts of all the important codes, laws, ordinances and regulations promulgated up to the present time, a revised edition of which is in course of preparation, will be transmitted to the Government of the United States of America as soon as possible. With a view to enabling nationals of the United States of America and other foreign nationals in China to familiarize themselves with Chinese laws and judicial procedure, translations of the principal Chinese codes, laws, ordinances and regulations are being made and will be placed on sale, such translations being prepared under the direction of the competent Department of the Chinese Government. Of course, the Chinese text is and remains the only authoritative text of Chinese codes, laws, ordinances and regulations.

(Signed) Chinese Representative

JOINT DECLARATION

With reference to the Treaty concluded today between the United States of America and the Republic of China, the undersigned have the honor to declare on behalf of their respective Governments, as follows:

1. Mutual Relations of Courts: In the interest of justice, it is agreed that the respective courts of China and of the United States of America will, upon request, render mutual assistance to each other in respect to the service of judicial processes, the execution of judgments, the execution of letters rogatory, commissions to take testimony, and the extradition of offenders, in so far as these requests are in conformity with international practice and with the laws of the country of the court upon which the request is made.

2. Rights and Privileges of Consular Officers: Pending the coming into force of a consular convention between China and the United States of America, the rights and privileges of the consular officers of China in the United States of America and of the consular officers of the United States of America in China (except the right of extraterritorial jurisdiction over nationals of the United States of America in those areas where the extraterritorial rights of the United States of America have been surrendered), as defined in the existing treaties between the two countries, shall remain in force, provided that the treatment accorded by either country to such officers of the other shall not be less favorable than that accorded to similar officers of the foreign country most favored in this respect.

(Signed) American Representative
(Signed) Chinese Representative

EXCHANGE OF NOTES BETWEEN THE AMERICAN REPRESENTATIVE
AND THE CHINESE REPRESENTATIVE

Excellency: With reference to the Treaty concluded today between the United States of America and the Republic of China, I have the honor to request that Your Excellency be good enough to confirm my understanding as follows:

1. Lawyers: Duly qualified American lawyers appearing on behalf of nationals of the United States of America in the Chinese courts shall not be required to have a knowledge of the Chinese language or to possess diplomas of Chinese law schools.

2. Rights in Immovable Property: All legal Chinese land transfer fees leviable under regular Chinese legislation shall be paid by nationals of the United States of America on account of land transactions effected after the date of the coming into force of the present Treaty; but no demand shall be made by the Chinese authorities for the payment of such transfer fees on the transfer of land to or from nationals of the United States of America which transfers were made prior to the date of the coming into force of the present Treaty, and rights in immovable property held by nationals of the United States of America shall not be impaired on account of the non-payment of such transfer fees in the past.

Rights in immovable property in China now held by nationals of the United States of America shall not be impaired except upon legal grounds as a result of a decision rendered by a Modern Court of Justice, but nationals of the United States of America shall comply with the laws of China in regard to such property. In reaching their decisions in such cases, the Chinese courts shall take into consideration the treaty provisions, and the laws, customs, and practices in various parts of China which existed at the time when such property rights were acquired.

Existing rights of nationals of the United States of America to acquire, hold, and freely dispose of and transfer their rights in immovable property in accordance with Chinese laws shall remain unimpaired.

3. Minor Offenses: Where nationals of the United States of America are involved in minor incidents or offenses such as infractions of municipal regulations--including motor car cases and similar cases--the Chinese police shall so far as may be practicable assure themselves of the identity of the individuals concerned by taking their names and addresses and shall not arrest them or detain them in police stations.

4. Bail: It is understood that the liability of a national of the United States of America standing bail for a party involved in court proceedings shall in all cases be limited to the amount of actual bail fixed by the courts.

5. Recognition of Professional Men: The qualifications of American professional men such as doctors, chartered accountants, architects and engineers, shall, if necessary, on production of proper evidence including registration with the Chinese Government, where such registration is required by Chinese law, be recognized by the Chinese courts.

6. Examination of Commercial Books and Correspondence: In connection with legislation providing for the examination of commercial books and correspondence it is understood that in the case of American firms the certificates of duly qualified chartered accountants shall be accepted with a view to dispensing with, as far as may be practicable, such examination.

7. Payment of Fines in Lieu of Detention and Imprisonment: The Chinese courts shall not intentionally discourage applications for payment of fines in lieu of detention and imprisonment made in accordance with the provisions of paragraph four of Article V of the Treaty by unnecessarily imposing the maximum fine.

8. Courts Outside of China Competent to Try Personal Status Cases: With reference to clause two of Article XIV, in regard to personal status matters, it is understood that when such cases arise which are to be dealt with outside the jurisdiction of the Chinese courts, they shall be dealt with by the competent courts of the United States of America.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) American Representative

Reply of the Chinese Representative

Excellency: I have the honor to acknowledge the receipt of Your Excellency's note of today's date referring to the Treaty concluded today between the Republic of China and the United States of America in which you request my confirmation of your understanding as follows:

(Eight points to be quoted in full.)

I hereby confirm your understanding quoted above as correct.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) Chinese Representative

NOTE OF THE CHINESE REPRESENTATIVE TO THE AMERICAN REPRESENTATIVE REGARDING LEGAL COUNSELORS

Excellency: With reference to the arrangements made in Article III of the Treaty concluded today between the Republic of China and the United States of America providing for the employment of foreign Legal Counselors, I have the honor to state that it is the intention of the Chinese Government to engage the services of at least one Legal Counselor of American nationality.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) Chinese Representative

NOTE FROM AMERICAN REPRESENTATIVE TO CHINESE REPRESENTATIVE

Excellency: With reference to Article XIV of the Treaty concluded today between the United States of America and the Republic of China, I have the honor to state that the Government of the United States of America reserves to itself the right to raise the question of trade and residence throughout the interior of China at such later date as it may deem appropriate.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) American Representative

(Pages 893-908)

The Secretary of State to the Minister in China (Johnson)[Paraphrase]

Washington, September 10, 1931--5 p. m.

320. Your 436, August 3, 6 p. m.

(1) Most-favored-nation treatment and guarantees against exactions are believed to be assured by provisions of our existing treaties continuing in force in the Shanghai area. The Department sought, while drafting article XVI, to exclude the Greater Shanghai area absolutely from all of the provisions of the proposed new treaty, so that the status quo would be preserved until a separate agreement has been negotiated for this area. Moreover, without the clause mentioned by the Legation, the provision in article XIX of the proposed treaty for abrogation of existing treaty provisions would create a situation in which there might be conflicting interpretations of the provisions for the continued exercise in the Shanghai area of extraterritorial jurisdiction.

(2) With a view to guarding against double taxation, the Department has, after further study, revised and is willing to take up on appropriate occasion with the British Foreign Office the paragraph in article XVI of the Department's draft in relation to taxation to be levied by the Chinese Government in the Greater Shanghai and Tientsin areas. As revised, the last part of this paragraph now reads thus:^{96/} "be liable for the payment of Chinese taxes referred to in article VI of the present treaty, provided that such taxation shall not discriminate in any way against nationals of the United States of America as compared with nationals of China and/or the nationals of any other country and provided that there shall be no duplication of taxation the levying of which falls within the competence of the authorities of the municipal subdivisions of these areas."

Stimson

(Page 912)

The Minister in China (Johnson) to the Secretary of State

Peiping, September 17, 1931--1 p. m.

[Received September 17--8:40 a. m.]592. Your 319, September 9, 3 p. m.^{99/}

1. Following personal letter from C. T. Wang dated September 15th, has been communicated to me by telegraph from Peck:

"Personal. My Dear Mr. Johnson: When you were leaving Nanking last, you intimated to me that you would be back by the first part of September. As two weeks have already gone by and not knowing when you will be back, may I

^{96/}

Quotation not paraphrased.

^{99/}

Not printed.

venture to suggest that you return to the Capital as soon as possible, as the one outstanding question between our two countries, namely, extraterritoriality, demands immediate attention. I am quite sure that you will agree with me that there is not much time to spare for an amicable and satisfactory solution before January 1st next. Moreover, your friends here are anxious to see you again. With best regards, yours very sincerely, Chengting T. Wang."

3. [Paraphrase.] I believe we should not take advantage of the present situation by complicating matters for the British respecting Tientsin.

4. It appears to me, on the other hand, that we should not be obliged indefinitely to wait before we proceed with the negotiations we have begun and continued in good faith, if our only reason for not going on with our negotiations is that we are waiting on the British.

The Department will not wish, I believe, to make use of the unsatisfactory handling of the Thorburn case¹ as a reason for our not negotiating.

5. I have not shown the Wang letter to Lampson, though I informed him of it today. It may be the Department's wish to consider if it would not be wise to proceed with our negotiations at least by discussing various treaty details pending an agreement on article XVI between the British and us. I might visit Nanking to arrange the beginning of such discussion between Hsu Mo and Peck, as in the case of Hsu Mo and Teichman. I think we should not allow the discussions to grow cold, although I know that Lampson hopes for delay on our part, reinforcing thereby the British position in the Thorburn matter. Lampson did not ask this in so many words. [End paraphrase.]

Johnson

(Page 914)

The Secretary of State to the Minister in China (Johnson)

Washington, September 18, 1931--2 p. m.

328. [Paraphrase.] Your 592, September 17, 1 p. m., and Department's 228, July 13, 5 p. m.

1. No comment or suggestions have been received by the Department from the British Foreign Office in regard to the memorandum mailed on July 14 to our Embassy in Great Britain² to be communicated to the Foreign Office; this memorandum contained the statement that the Department would appreciate receiving the Foreign Office's comments and suggestions. Nor has the Department in this period had any other indication of the views of the British Government regarding the extraterritoriality negotiations beyond what has been reported by you of your exchanges with Lampson.

¹/ Involving a British subject.

²/ See quotation in telegram No. 228, July 13, 5 p. m., to the Minister in China, p. 890.

2. The Department infers that the British Government wishes to defer its own commitment, including the resumption of negotiations, and hopes we will delay resuming negotiations.

3. The Department feels that this problem cannot be dealt with adequately merely by avoiding action. While the reluctance of any government to go ahead at this time with this subject stems from the present conditions in China, still, in view of C. T. Wang's letter to you and of previous conversations, we are called upon to take action, and the Department feels the situation is such as not to warrant refusing to negotiate. Although, as stated in the Department's 319, September 9, 3 p. m., the Department would prefer that our negotiations with the Chinese be resumed simultaneously with those of the British or thereafter and would regret having to proceed without similar British action, it is considered desirable by the Department that this Government place no obstacle in the way of concluding before the end of this year, if at all possible, an agreement between the American and Chinese Governments. [End paraphrase.]

4. Department therefore expects shortly to give you definite instructions in regard to the above.

5. Referring to paragraphs 3 and 4 of your telegram under reference, Department concurs in the view which you express with regard to the question of Tientsin and with regard to the question of the Thorburn case.

6. Referring to your paragraph 5, Department is giving these points consideration.

7. You may inform Lampson at your discretion of the above.

(Page 915)

The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Peiping, October 6, 1931--1 p. m.

[Received October 6--8:15 a. m.]

709. My 592, September 17, 1 p. m. Yesterday I saw Lampson who read to me his Government's message stating that the British Government was not ready to agree to the trading of Tientsin for a new proposal regarding Shanghai, yet at the same time it believed that the American negotiations regarding Shanghai should go ahead with a view to finding out the Chinese attitude on this question. It is our understanding that the British Government is communicating with you in this regard.

Johnson

(Page 916)

2/
Not printed.

The Department of State to the British Foreign Office

Memorandum

The Department of State has received through the American Embassy in London the Foreign Office's memorandum of October 5, 1931, commenting upon the Department's memorandum of July 14, 1931, and enclosure therewith, in regard to Article XVI--Reserved Areas--of the proposed new Treaty with China.

The Department has noted the comment of the Foreign Office. In view, however, of the present situation in China arising out of the crisis in Manchuria, it is believed that the future course of the negotiations in regard to extraterritoriality must await further developments.

The Department notes that the British Foreign Office views with "considerable concern" the Department's proposal to abandon, in the last resort, the reservation of Tientsin. In this connection, the Department desires to point out that it has all along contended for the reservation of four places in China, namely, Shanghai, Tientsin, Hankow and Canton; that it has not at any time in the conduct of its negotiations with the Chinese Legation in Washington or with the Chinese Ministry of Foreign Affairs in Nanking intimated that it was prepared to give up a reservation of any of these four places; that the Department's suggestion that Tientsin might be given up was offered as an alternative to be considered only "in the last resort" and was and is believed to be in accord with views of the Foreign Office as communicated to the Department by the British Ambassador in Washington in a memorandum dated March 7, 1931,^{8/} summarizing the substance of instructions which had been sent by the Foreign Office to the British Minister to China, as follows:

"With regard to point (c) in paragraph five above (excluded areas), His Majesty's Government consider that the exclusion of Shanghai is the most important interest at stake, even if the area excluded is limited to the International Settlement only. This seems to them vitally necessary. Canton, Hankow and Tientsin are regarded as important, but His Majesty's Government think they might be abandoned as a last resort."

However, during the future course of its negotiations with the Chinese Government, the Department will keep in mind the views of the Foreign Office on this question.

Washington, October 27, 1931.

(Pages 918 and 919)

^{8/} For full text of memorandum, see p. 741.

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The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Shanghai, November 2, 1931--1 p. m.
[Received November 2--6:33 a. m.]

Your 101, October 26, 2 p. m., to Nanking.

(1) My 709, October 6, 1 p. m. Since then I have discussed the question of extraterritorial negotiations with Lampson, and we agree that, in the event the present negotiations between the Nanking and Canton delegates resolve the differences which exist between the Nanking and Canton sections of the Kuomintang by presenting to us a unified Chinese Government with a new Foreign Minister, it would be wise for us to go forward with our negotiations with the hope of obtaining a possible agreement by the end of 1931. In the drafts under discussion we feel we have a very good treaty. These drafts we feel represent the best to be expected.

(2) It is our feeling that the signature of agreements along the lines of our drafts before the end of 1931 will forestall precipitate Chinese action at that time under the mandate issued last May.^{9/}

(3) In this matter I do not propose taking an initiative without consulting the Department, but I should like the Department to consider whether I should take advantage of an early opportunity to sound out a new Foreign Minister, if one is installed, on the question of the American draft with a view to starting discussions which might end with the signature of an agreement along those lines.

Johnson

(Pages 919 and 920)

The Minister in China (Johnson) to the Secretary of State^{11/}

[Paraphrase]

Nanking, December 15, 1931--5 p. m.
[Received December 15--10:55 a. m.]

Your 134, December 12, 1 p. m.^{12/}

(1) Since my November 2, 1 p. m., from Shanghai, on extraterritoriality, it has not appeared wise to me to precipitate discussions on this subject, conditions having been so uncertain in regard to the Chinese Government. My British colleague agrees with me in this. In the course of a

^{9/} Mandate issued May 4, 1931, not printed; see memorandum by the Minister in China, May 4, p. 837, and telegram of May 5 from the Minister, p. 838.

^{11/} Telegram corrected on basis of Minister's telegram of December 16, 1931, 9 a. m., from Nanking; received December 15, 11:55 p. m. (793.003/793)

^{12/} Not printed.

conversation I had some time ago with Frank Lee, the Chinese Vice Minister for Foreign Affairs, I took occasion to mention to him my hope that the Chinese Government would not attempt putting into effect under the existing conditions the Government mandate issued last May, which was to become effective January 1, 1932. Lee agreed with me that under present conditions it would be impossible for his Government to implement this mandate on January 1. He said no preparations had been made to do this and it was his hope we would not press this matter, for he expected, once unification had been effected between Nanking and Canton, to find an opportunity to persuade the new Chinese Government to let matters stand. He stated it was difficult for him at that time to take this up.

(2) Previously my British colleague had conversed with Lee along similar lines, and subsequently he took the same stand in a conversation with a member of the Kuomintang Executive Committee. A member of this committee agreed with my British colleague that under present conditions it would not be wise for the Chinese Government to attempt the implementation of the mandate as of January 1.

(3) The other day my British colleague had a conversation with the Acting Foreign Minister, Wellington Koo, subsequent to his taking up office and introduced this question. Wellington Koo was informed that the British Government's intention was not to complete an agreement relative to extraterritoriality while conditions prevailed as at present. Dr. Koo made no comment, but it is our hope that the Government will not do anything at this time regarding extraterritoriality.

(4) Conditions in the Government are so unsettled that I have thought it useless to try to enter any serious discussion of extraterritoriality or related questions, so I have refrained from taking up the matter with Dr. Koo in the hope that conditions would stabilize so that something could be done.

(5) The President of the National Government today resigned and I expect to hear before the day is over that the Acting Foreign Minister has left office. I fear some days may elapse before there will be a sufficiently established Government with which to have any serious discussions. If the Department does not desire me to stay here, pending establishment of such a Government, I would like to return to Peiping with the expectation of coming back here after the beginning of the year when the Government has had a chance to settle down in office and when responsible people can be seen. At present, Nanking lacks a responsible head of department. I should wish to leave Nanking not later than December 21.

Johnson

(Pages 921 and 922)

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The Secretary of State to the Consul General at Nanking (Peck)

[Paraphrase]

Washington, December 17, 1931--1 p. m.

137. For the Minister: Your December 15, 5 p. m., from Nanking, the extraterritoriality paragraphs.

(1) With reference to the Department's 129, December 1, 7 p. m., to Nanking, paragraph (1), second sentence, and to your telegram cited above, paragraphs (3) and (4), the Department feels it was unfortunate you did not mention the matter to Dr. Koo, thus completing our record in connection with the arrangement between you and C. T. Wang.

(2) With reference to your telegram cited above, paragraph (1), regarding Frank Lee's statement that no preparations had been effected to implement the May 4 mandate, the Department has had certain indications that, though complete preparations have not been effected to implement the mandate, steps have been taken looking toward this end which, if carried out, may lead to unfortunate incidents after January 1st. In his political survey for last August, the Consul at Yunnanfu reported publication in the Yunnan Provincial Government's Official Gazette of an instruction from the National Government at Nanking regarding the May 4 mandate to the effect that from January 1, 1932, the regulations governing exercise of jurisdiction over foreigners in China will be effective. A notice was carried in the same Official Gazette to the effect that instructions accordingly had been sent authorities of Yunnan's three district courts and first prison. It could be assumed that similar instructions went to other Provincial Governments. More material on this subject may have reached the Legation.

Stimson

(Pages 922 and 923)

✓ ✓
The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, December 19, 1931--9 a. m.
[Received December 19--4:45 a. m.]

Department's 137, December 17, 1 p. m., to Nanking.

Last evening I saw Wellington Koo who told me that he would shortly again submit his resignation. I brought up the question concerning putting the May 4 mandate into effect and stated my hope that the Chinese Government would take no steps to implement the mandate on January 1. I pointed out that the negotiations in which we were engaged had been interrupted by the autumn's events and that implementation of this mandate would destroy the atmosphere of cordiality in which our negotiations were being conducted. Dr. Koo said the question of the mandate was engaging the Government's attention and would naturally demand the early attention of the new government.

upon its coming into power. Koo inquired whether the United States was taking a stand on extraterritoriality independently of Great Britain. I answered that our negotiations were independent of but more or less simultaneous with those of Great Britain; that our interests naturally were pretty much alike, and that at any rate we do not propose putting our citizens in a position which is less favorable than that of the most favored nation. Koo remarked that no doubt we would be satisfied to have our agreement provide that it would not become effective for American citizens pending a similar relinquishment of the rights of other nationals. I said I was without final instructions and did not know exactly how my Government stood in this respect.

Thereupon Koo asked what would be the American attitude if in the next few days the Chinese Government should formally request continuation of the negotiations. I told him I did not know, but that I felt my Government was willing to continue the negotiations although it naturally felt, under existing unsettled conditions, it would be better to wait. If such a request were made of me, I said, I would of course have to refer it to Washington. He remarked that a statement by us of our readiness to go on with the negotiations would greatly aid them in handling the mandate problem. Koo pointed out that little remained for discussion with the British, but with us the question of reserved areas still remained.

I expressed the hope that until after the 1st of January at least nothing would be done in this regard.

Johnson

(Pages 923 and 924)

✓ ✓
The Department of State to the Chinese Legation^{14/}

[Washington,] December 19, 1931.

Last summer when Dr. C. C. Wu resigned his position as Minister of China to the United States, his departure from Washington rendered it impossible to continue here the negotiations which had been going on during the period while he was here on the subject of extraterritoriality. The Department of State then instructed the American Minister to China to carry the matter on with the Minister for Foreign Affairs. When the call of the North caused both our Minister and Dr. Wang to desire to suspend matters during the summer vacation period, it was agreed that there would be a recess and the matter would be taken up again after Minister Johnson's return to Nanking in the early fall. At about the time when Minister Johnson was preparing to leave Peking for Nanking, the Manchuria incident broke. A few weeks later, shortly after Minister Johnson's arrival in Nanking, there occurred the assault by the students on Dr. Wang. Thereafter, events in connection with Manchuria have held the whole of the stage.

^{14/}

Statement read to the Chinese Minister on December 21, 1931.

A few days ago the Department instructed Minister Johnson to broach the subject to the Minister for Foreign Affairs, Dr. Koo. This Minister Johnson has done. Minister Johnson reports a conversation of a rather inconclusive nature in which there was discussed the question of the practicality of resuming these negotiations now and some reference was made to the mandate which the Nanking Government had issued in May last on the subject of putting into effect Chinese jurisdiction on January 1, 1932.

In view of the now proceeding governmental changes in China we have no clear idea as to the situation. Minister Johnson has left Nanking for the holidays.

This Government is prepared to go on with the negotiations now or at any time when it suits the convenience of the Chinese Government to resume discussion of this matter. At the same time, it does not seem to us that the moment is opportune and it would seem to us advisable to let the matter continue in suspension.

(Pages 924 and 925)

✓ ✓
The Minister in China (Johnson) to the Secretary of State

[Paraphrase]

Nanking, December 21, 1931--11 a. m.
[Received December 21--5:35 a. m.]

Your 139, December 19, 6 p. m.

(1) It is impossible at the present moment to anticipate precisely what action if any the Chinese may take regarding this question. Last night General Chiang Kai-shek informed me he was leaving either this week or next week to spend 2 or 3 months at Fenghua, Chekiang. Madame Chiang said her brother, T. V. Soong, also was leaving the Government. The Congress scheduled to open today has been postponed until tomorrow and is unable to complete its number. It will be occupied until about December 25 with a complete reorganization of the Government. Wellington Koo told me he expected to quit Nanking before the year's end. C. C. Wu tells me he does not expect any important questions in foreign affairs to be taken up for the present by the Government. I am unable to find anywhere anyone who can speak with responsibility on this or any subject just now.

(2) In view of the above situation and if the Government attempts putting the May mandate into effect on January 1, the only thing for us to do, it seems to me, is to notify the Government of our inability to accept the situation resulting therefrom as applicable to our citizens and to point out our continued willingness to complete the extraterritoriality negotiations.

I leave today for Peiping.

Johnson

(Pages 925 and 926)

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Memorandum by the Under Secretary of State (Castle)

Washington,⁷ December 23, 1931.

The British Ambassador brought in the attached memorandum^{15/} on the subject of extraterritoriality in China, this being the substance of the instructions sent to Sir Miles Lampson. The Ambassador was anxious to know whether, in general, we agreed with this attitude. I said that we, of course, felt that negotiations, when there was really no government to negotiate with, were pretty useless, but that we also felt we should not put ourselves in the position where the Chinese might say that we had broken negotiations and, therefore, with more apparent right, put the mandate into effect. The Ambassador said that it is the general belief in England that any new Chinese Government which comes in will not accept the draft as negotiated by Sir Miles Lampson, but that it probably will be a question of beginning all over again. He asked whether we had any idea as to whether the mandate would probably be put into effect on the first of January. I said that we had none, but that we rather believed that no new move would be made and that there might be a possibility that the local authorities in the various parts of China would attempt to put it into effect, that, in that case, we would be inclined to stand very strongly on our rights. I said that I could not commit this Government to the implication in the sentence in the memorandum which states, "His Majesty's Government would not hesitate to take what measures are open to them to maintain their treaty rights" as the implication certainly was that the British would not hesitate to land troops or to take really warlike measures. I repeated, however, that we should certainly plan to stand firmly on our treaty rights.

The Ambassador said he would be very grateful for a memorandum stating our position, particularly if it seriously deviated from the position taken in the instructions to Sir Miles Lampson.

W. R. Castle, Jr.

(Pages 926 and 927)

✓ ✓
The Department of State to the British Embassy^{16/}

The Department of State has received from the British Ambassador in Washington an informal memorandum dated December 23, 1931,^{17/} giving the gist of instructions sent by his Government to the British Minister to China in regard to extraterritoriality and making inquiry (1) in regard to the views of the American Government as to the danger that extraterritoriality may be disregarded in China after January 1, 1932, and (2) whether the American Government would be prepared to adopt an attitude similar to that of the British Government in resisting an attempted enforcement of the Nanking Government's Mandate of May 4, 1931, in regard to the exercise of jurisdiction over foreigners in China on and after January 1, 1932.

^{15/} Not printed.

^{16/} Handed to the British Ambassador on December 29, 1931.

^{17/} Not printed.

The Department notes that the British Government is not prepared at the present time to complete its negotiations with China in regard to extraterritoriality; also that the British Government is prepared, by such measures as are open to them, to resist attempt, if and when made, by the Chinese authorities to enforce the Mandate of May 4, 1931.

The views of the Department with regard to the questions referred to above are given below.

It is doubted whether there will exist in China, by January 1, 1932, or for some time thereafter, either at Nanking or elsewhere in China, a central Government sufficiently well established to deal effectively with the question of extraterritoriality either by negotiation or by unilateral action along the lines of the enforcement of the Mandate of May 4, 1931. In view of the gravity of the Sino-Japanese situation, any central Government that may exist in China will in probability follow the course of least resistance-- which will be to do nothing fundamental about extraterritoriality for the time being.

In view, however, of the fact that the Nanking Government issued instructions some months ago to some, if not all, of the provincial governments of China, in regard to the taking over of jurisdiction over foreigners in China on and after January 1, 1932, it is not unlikely that a case may arise somewhere in China involving an extraterritorial foreigner, either as a defendant in a civil case or as accused in a criminal case, in which the local authorities, acting under the instructions referred to, may attempt to take jurisdiction. It is believed, therefore, that if and when the question of the enforcement of the Mandate of May 4, 1931 does arise, it will arise in that manner.

If this estimate of the situation is correct, the central Chinese Government existing at the time will be confronted with a situation which will require a decision on its part as to whether it will attempt to support the local authorities or will instruct them to hand the foreigner involved over to his own authorities. On the other hand, the extraterritorial power whose national is involved (and probably all extraterritorial powers) will be faced with a situation which will require a decision as to whether this assumption of jurisdiction by the local Chinese authorities is to be resisted and how.

With regard to the attitude which the central Government of China may take under such circumstances, this will depend largely upon the strength of that Government and upon the difficulties with which it may be confronted at the time. It is impossible, therefore, at this time to predict what its attitude will be.

With regard to the attitude which the American Government would take in the event that one of its nationals happens to be the first involved in a case arising under the Mandate of May 4, 1931, it is believed that the American Government would find it necessary to lodge a vigorous protest both with the local authorities and with the national Government of China against this violation of the treaty rights of American nationals in China. If such protest should not result in the handing over of the American national to the American authorities, the question of what further steps are to be taken to enforce American treaty rights will necessarily depend upon the situation existing at the time and, to a certain extent, upon the attitude of the other principally interested extraterritorial powers, as the Department appreciates the importance of similarity of attitude toward this subject on the part of such powers.

[Washington,] December 28, 1931.

(Pages 927 and 928)

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Memorandum by the Chief of the Division of Far Eastern Affairs
(Hornbeck) of a Conversation With the British Ambassador (Lindsay)

Washington, December 29, 1931.

Mr. Hornbeck made reference to the conversation between the British Ambassador and Mr. Castle of December 23, 1931,^{18/} and to the memorandum which the Ambassador left with Mr. Castle.^{19/} He said that the Department was replying^{20/} with a memorandum--the original of which he handed to the Ambassador; but that there were one or two points in the incoming memorandum with regard to which the Department wished that he inquire and one or two features of the Department's reply concerning which he was to make comment. He wished to inquire whether it was to be understood that Sir Miles Lampson was to speak to the Chinese in advance of the occurrence, if and when, of an attempt by the Chinese to assume jurisdiction over an extra-territorial national.

To that question, Sir Ronald replied that he inferred that it was so intended. He asked whether we had had any word from Minister Johnson of Sir Miles having communicated in this sense with the Chinese.

Mr. Hornbeck replied that we had not had such word; that it was his understanding that both the British Minister and our Minister were away from Nanking at present; and that it would seem that it might be assumed that Sir Miles had not acted as yet, in view of the pending reorganization of the Chinese Government at Nanking. He said parenthetically that he had just heard from a newspaper correspondent that word had come that the new Cabinet had been formed and that Eugene Chen was to be Minister for Foreign Affairs.

The Ambassador said that in all probability Sir Miles had not yet acted and that he would probably inform the American Minister before acting.

Mr. Hornbeck said that we had been discussing here the question of the advisability or inadvisability of taking the initiative in this matter and that we were inclined to the view that it might be best to await the approach of January 1 in silence, leaving it to the Chinese to take the initiative, if any. We thought it might reasonably be hoped that, preoccupied as they are with other matters, and disorganized as they are, they would avoid gratuitously raising this embarrassing question under present circumstances. We recognized, of course, that there was no telling what they might do.

The Ambassador said that it was of course a matter for hope.

Mr. Hornbeck referred to the statement in the British memorandum that the British Government would expect to employ "what measures are open to them" by way of combating an attempt on the part of the Chinese to exercise jurisdiction in advance of conclusion of an agreement. He said that the Department would welcome such indication as the British Government might feel it could make of the measures which might be possible to it.

^{18/} See memorandum by the Under Secretary of State dated December 23, p. 926.

^{19/} Memorandum not printed.

^{20/} Supra.

The Ambassador said frankly that he did not know how far they might be willing to go, but it might be that all they could do would be to voice their objection. He said that, after talking with Mr. Castle, he had reported to his Government that the terms in which it mentioned this matter were so vague that it could not be expected that the American Government would make any definite commitment as to its readiness to take concurrent action. He said that he thought that the view expressed in our memorandum that it would be necessary to consider the circumstances, if and when a case arose, was the correct position.

Mr. Hornbeck then said that he was authorized to introduce a suggestion informally and quite off the record: there had been some discussion here of the possible advisability of arrival at an informal understanding on the part of the powers most interested which would enable them to prepare in advance for simultaneous and identical or similar action in case the Chinese should attempt to take jurisdiction over an extraterritorial national and in connection therewith cite the Mandate of May 4, 1931. He said that it might be quite impracticable, but that we wondered whether the British Government might feel inclined to canvass that possibility, taking it up with, perhaps, the French and the Japanese Governments, with the thought that, if and when the Chinese cited the Mandate, the powers might all express their non-assent.

The Ambassador said that he had thought of some such possibility, but that, in view of certain current situations, he felt that if anybody made such a suggestion and if the attempt were made to formulate in advance an understanding with regard to action to be taken, there would be danger of disclosure and consequent disadvantage to all concerned. He felt that it was better to confine the discussion of the problem to the British and the American Governments.

The conclusion was reached that the Department would inform the American Minister to China with regard to the memoranda exchanged and it would be expected that the American and the British Ministers would confer. It would be understood that both Governments would expect to object to any attempt by the Chinese to assume jurisdiction in the absence of conclusion of agreements.

Mr. Hornbeck said that it must be kept in mind that the American Government had outstanding an informal undertaking on the part of its Minister that it would be ready to resume negotiations whenever the Chinese requested that they be resumed; he referred to the fact that the British negotiations were more advanced than the American negotiations and that it might be difficult for the British, in case the Chinese indicated a desire to conclude the matter, to decline to carry the negotiations through. The Ambassador assented. The view was expressed that no one could predict what Eugene Chen might attempt.

Mr. Hornbeck said that in any event it could be understood that the British and the American Governments would not readily assent to abrogation of their extraterritorial rights by Chinese unilateral action. The Ambassador said that that was his view.

The conversation there ended.

S/[Stanley] K. H/[ornbeck]

(Pages 928-930)

The Minister in China (Johnson) to the Secretary of State

Peiping, December 31 ³⁰, 1931--1 p. m.
[Received December 30--2:15 a. m.]

1152. Following from American Consul General at Nanking:

"December 29, 8 p. m. Government Mandate has been issued December 29th postponing the date of going into effect of the law of May 4, 1931, relating to jurisdiction over foreigners in China. When I have confirmed the text I will telegraph translation."

Johnson

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The Minister in China (Johnson) to the Secretary of State

Peiping, December 31, 1931--10 a. m.
[Received December 31--2:30 a. m.]

1158. Legation's 1152, December 30, 1 p. m. Following from American Consul General at Nanking:

"December 31, 10 a. m. ^[sic] My December 29, 8 p. m. The following is the Chinese text of the mandate as it appears in today's issue of the semi-official Chung Yang Jih Pao:

Regarding the application of jurisdiction over foreigners it is to be recalled that the regulations governing application of jurisdiction over foreigners in China in 12 articles were promulgated on May 4th and that it was decided upon to put them into force on and after January 1, 1932, as is on record.

Now due to the famine and calamities in various localities all necessary preparations have not, as yet been effected. The enforcement of the said regulations governing application of jurisdiction over foreigners in China should be temporarily postponed. The appropriate authorities are still directed immediately and satisfactorily to complete all preparations in order that a date for enforcement may be fixed and judicial rights respected.

Before dispatching my December 29, 8 p. m., I obtained oral confirmation from an authoritative source."

Johnson

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The Acting Secretary of State to the Minister in China (Johnson)

[Paraphrase]

Washington, December 31, 1931--3 p. m.

476. Referring to paragraph 3 of Department's 472, December 29, 6 p. m., regarding extraterritoriality.^{21/}

(1) The Department has been inclined to think it would be advantageous, before there arises a case involving an attempt by any Chinese authorities to take jurisdiction, to make to the Chinese authorities an express statement in the sense that Chinese unilateral action will not be assented to.

However, in view of your 1152, December 31 ³⁰/, 1 p. m., the Department now is of the opinion that for the time being it may be most advisable to refrain from such action and thus to avoid giving new prominence to the subject of extraterritoriality.

(2) Points to guide you:

(a) You should discuss this subject with Lampson, so that, in the event of the question of the mandate and its possible enforcement coming to the front again, he and you, you being so authorized, may shape your representations on behalf of your respective Governments along similar lines and may present them at approximately the same time.

(b) If any Chinese authorities try to take jurisdiction over one of our citizens, you are authorized also to make objection to the Chinese Government.

(c) If and when the representations in either event are made, the Chinese Government should be informed that any unilateral action by authorities in China derogatory to the extraterritorial rights of Americans is objected to and that this Government expects to continue enjoying these rights until their modification or abrogation through the conclusion and coming into effect of an agreement on the subject. Whenever this communication is made, you should clearly add that this Government remains willing to continue negotiating with China in order to reach a mutually satisfactory agreement.

(3) The foregoing instruction is to guide you and is not to be circularized for the present to American consular officers in China.

Carr

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Excerpts, pages 716-932

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Telegram not printed; it reported the British Ambassador's call on December 23 (see memorandum by the Under Secretary of State, p. 926), and quoted the Department's memorandum of December 28 to the British Embassy (p. 927); par. 3 stated that comments and instructions would follow in a later telegram.